

1334 UNITED STATES  
CIRCUIT COURT OF APPEALS 1334  
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD. /

(IN THREE VOLUMES.)

FORBES P. HASKELL, as Receiver of SCANDINAVIAN-AMERICAN  
BUILDING COMPANY, a Corporation, et al.,

Appellants,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al.,

Appellees.

TACOMA MILLWORK SUPPLY COMPANY, a Partnership Consisting of  
ANN DAVIS and R. T. DAVIS, Jr., as Executors of the Estate of  
R. T. DAVIS, Deceased, R. T. DAVIS, Jr., LLOYD DAVIS, HARRY  
L. DAVIS, GEORGE L. DAVIS, MAUDE A. DAVIS, MARIE A.  
DAVIS, RUTH G. DAVIS, HATTIE DAVIS TENNANT and ANN  
DAVIS,

Appellants,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al.,

Appellees.

McCLINTIC-MARSHALL COMPANY, a Corporation, and E. E. DAVIS &  
COMPANY, a Corporation, and FAR WEST CLAY COMPANY, a  
Corporation,

Appellants,

vs.

ANN DAVIS and R. T. DAVIS, Jr., as Executors of the Estate of R. T.  
DAVIS, Deceased, et al.,

Appellees.

WASHINGTON BRICK, LIME & SEWER PIPE COMPANY, a Corporation,  
Appellant,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al.,

Appellees,

BEN OLSON COMPANY, a Corporation,

Appellant,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al.,

Appellees,

J. P. DUKE, as Supervisor of Banks of the State of Washington, and as  
Successor in Office of the Defendant CLAUDE P. HAY, as State  
Bank Commissioner of the State of Washington, FORBES P. HAS-  
KELL, Jr., as Special Deputy Supervisor of Banks of the State of  
Washington, and SCANDINAVIAN-AMERICAN BANK OF TACOMA,  
a Corporation,

Appellants,

vs.

McCLINTIC-MARSHALL COMPANY, a Corporation, et al.,

Appellees,

VOLUME III.

(Pages 865 to 1329, Inclusive.)

Upon Appeals from the United States District Court for the Western  
District of Washington, Southern Division.

FILED  
JAN 30 1923



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District of Washington, Southern Division.





**Exhibit No. 137.**

WASHINGTON BRICK, LIME & SEWER  
PIPE COMPANY, a Corporation,  
Claimant,

vs.

SCANDINAVIAN-AMERICAN BUILDING  
COMPANY, a Corporation.

**NOTICE OF CLAIM OF LIEN.**

NOTICE IS HEREBY GIVEN that the Washington Brick, Lime & Sewer Pipe Company, a corporation organized under the laws of the State of Washington, with its principal place of business at Spokane has and claims a lien upon certain real property described as:

Lots Ten (10), Eleven (11) and Twelve (12), in Block One Thousand Three (1003), as shown and designated on the map and plat of New Tacoma, as filed in the Office of the Auditor of Pierce County, Washington,  
for materials furnished to Scandinavian-American Building Company, a corporation organized under the laws of the State of Washington, with its principal place of business at Tacoma, pursuant to a written *written* agreement between said claimant and said Scandinavian-American Building Company, a corporation, as owner, dated February 28th, 1920, whereby said Claimant agreed to furnish all the terra cotta for a building to be erected upon said real property herein described, according to plans and specifications prepared by

the architect of said Owner, and according to further drawings and explanations to be furnished by the owner, necessary to detail and illustrate the work to be made, for which the owner agreed to pay the sum of one hundred nine thousand (\$109,000.00) dollars.

That pursuant to said contract, said Claimant commenced to deliver said materials to be used upon and in the construction of the building on said real estate, on September 25th, 1920, and ceased to deliver the same on or about January 13th, 1921.

That the owner or reputed owner of said real estate is Scandinavian-American Building Company, a corporation.

That there is now due and owing the said Washington Brick, Lime & Sewer Pipe Company, a corporation, claimant, from said Scandinavian-American Building Company, a corporation, owner, the sum of eighty-nine thousand (\$89,000.00) dollars, with interest, over and above all just credits and offsets, for which said sum said claimant has and claims a lien upon said real estate.

WASHINGTON BRICK, LIME & SEWER  
PIPE COMPANY, a Corporation.

By A. B. FOSSEEN,  
Its President.

State of Washington,  
County of Spokane,—ss.

A. B. Fosseen, being first duly sworn, deposes and upon his oath says: I am the President of the Washington Brick, Lime & Sewer Pipe Company,

a corporation, lien claimant above named, and make this affidavit for and on its behalf, being thereto duly authorized,

I have read the foregoing Notice of Claim of lien, know the contents thereof, and that the matter and things therein stated are true and said claim is just.

A. B. FOSSEEN.

Subscribed and sworn to before me this 28th day of January, 1921.

[Seal] CHARLES P. LUND,  
Notary Public for the State of Washington, Residing at Spokane.

Recorded February 24, 1921, on page 26, Book 16, Records of Liens, Pierce County, Washington. [675]

The cause of Ben Olson Company, defendant, coming on to be heard upon its amended answer and counterclaim, and its reply to the answer and counterclaims of the Scandinavian-American Bank, J. P. Duke, Commissioner of Banking of the State of Washington and Forbes P. Haskell, Deputy Commissioner of Banking, and Receiver of the Scandinavian-American Building Company, thereupon:

Mr. FULTON, Attorney for Crane Company, said: The Olson case and my claim are identical in many respects, and I am willing that the Olson case may be heard first.

**Testimony of Ben Olson, for Defendant, Ben Olson Company.**

BEN OLSON, called on behalf of defendant Ben Olson Company, duly sworn, testified:

(By Mr. STILES.)

I am president of the Ben Olson Company; have been since. Its business is plumbing and heating contracting. I know Drury, Larson and people connected with the Scandinavian-American Bank. We had the contract for furnishing material and labor on the new building. Were invited to submit bids early in January, 1920, for the plumbing and heating. Submitted bids. Paper produced is a copy of the bid submitted.

Admitted as Exhibit 251 (Stiles), as follows:  
[676]

**Defendant's Exhibit No. 251.**

(Stiles.)

Tacoma, Washington, Feb. 25, 1920.

Scandinavian-American Building Company,

Tacoma, Wash.

Dear Sirs:

We propose to furnish and install the Plumbing and Heating Equipments in the New Building to be erected for the Scandinavian-American Bank Building Company, Tacoma, Washington, for the sum of Ninety One Thousand (\$91,000.00) Dollars.

This bid is based on the plans and specifications prepared by Mr. Frederick Webber, Architect and Engineer, modified as follows:

Using enameled iron lavatories Plate — in offices and Plate — in the public toilets as specified.

Also including two house pumps as per specification.

Also including one sump pump.

If Bond is desired cost of same will be added to our bid.

This Bid is based on present freight rates, and in event of a raise in rates same will be added to cost of all material not in transit.

Woil and Waste pipe to be assembled in pipe space above Bank. Size of waste and vent lines to be according to Tacoma Plumbing Ordinance.

Yours truly,

BEN OLSON COMPANY,

By \_\_\_\_\_.

WITNESS.—Our bid was accepted and we entered into a contract. Contract produced and admitted as Exhibit 252 (Stiles) as follows: [677]

**Defendant's Exhibit No. 252.**

**(Stiles.)**

THIS AGREEMENT, Made this 27th day of February, A. D. 1920, by and between Scandinavian-American Building Company, a corporation, hereinafter called the "Owner," party of the first part, and Ben Olson Company, of Tacoma, Washington, hereinafter call the "Contractor," party of the second part.

WITNESSETH:

WHEREAS, the said Scandinavian-American Building Company, Owner, is about to begin the



erection of a sixteen-story building on the property situated in Pierce County, Washington, described as follows: Lots Ten (10), Eleven (11), and Twelve (12) in Block One Thousand Three (1003), as shown and designated upon a certain plat entitled "Map of New Tacoma, W. T." of record in the office of the Auditor of Pierce County, Washington, according to plans and specifications prepared by Frederick Webber, of Philadelphia, Penn., architect, and

WHEREAS, the said Ben Olson Company of Tacoma, Washington, is desirous of entering into a contract with the said Scandinavian-American Building Company, Owner, to furnish all plumbing and heating, as per estimate of February 21, 1920, hereto attached, under and subject to all terms, limitations and conditions contained in the plans and specifications hereinbefore referred to.

NOW THIS AGREEMENT WITNESSETH,

ART. I. That in consideration of the agreements herein contained, the Owner agrees to pay to the Contractor, the sum of Ninety Thousand and No/100 (\$90,000.00) Dollars, in installments as hereinafter stated. Said payments, however, in no way lessening the total and final responsibility of the Contractor. No payment shall be construed or considered as an acceptance of any defective work or improper material.

Although it is distinctly understood and agreed by and between the parties hereto that this contract is a whole contract, and not severable or divisible,

yet for the convenience of the Contractor, it is stipulated that payments shall be made as follows:

75% monthly, to be paid in cash, of the estimated value of work delivered and also of work erected in place, and the balance of 25% to be paid within thirty (30) to sixty (60) days from the completion and acceptance of work by the architect.

ART. II. The said Contractor hereby covenants, promises and agrees to do all of the aforesaid work to be furnished and finished agreeably to the satisfaction, approval and acceptance of the Architect of said building and to the satisfaction, approval and acceptance of the said Owner, according to the true intent and meaning of the drawings, plans and specifications made by said Architect, which said plans, drawings and specifications are to be considered as part and parcel of this agreement, as fully as if they were at length herein set forth, and the said Contractor is to include and do *necessary* work under his contract, not particularly specified, but required to be furnished and done in order to fully complete and fulfill his contract to the satisfaction of the said Architect and Owner aforesaid.

ART. III. The Contractor hereby agrees that time shall be considered the very essence of this Contract and to complete all the obligations herein assumed, and to enter into the spirit of co-operation under which all the Contractors are working. And the said Contractor further covenants and agrees to perform the work promptly, without no-



tice on the part of anyone, so as to complete the building at the earliest possible moment. [678]

ART. IV. The Contractor further covenants and agrees to observe carefully the progress of the work upon the entire building, without notice from anyone, and to procure drawings at least two weeks prior to executing the work, and to perform his portion of the work upon said building at the earliest proper time for such work, and to be responsible for all loss occasioned directly and indirectly by any lack of knowledge upon his part, as to the proper time to perform his work.

ART. V. The said Contractor shall complete the several portions and the whole of the work comprehended under this agreement by and at the time or times hereinafter stated, viz.:

Contractor to follow erection of steel work with all main lines for plumbing and heating and to buy, if necessary, piping in the open market in order to keep up with the steel work, so that the whole of said work can be completed within ten (10) months from the date of this contract.

It is also understood and agreed that the radiators from the old building are to belong to the Contractor.

ART XIV. And the Contractor further agrees for himself, his heirs, executors, administrators and assigns to waive any and all right to any mechanic's claim or lien against said premises, and hereby expressly agrees not to file any claim or lien whatsoever against the premises involved in this contract..

ART. XVI. And any and all work that may be

cut out and omitted from this contract, during the progress of the work, shall be allowed by the Contractor at the regular contract price, and shall be adjusted and agreed upon by said parties before the final settlement of their accounts.

ART. XIX. The Contractor shall, upon request from the Owner, furnish forthwith a bond or bonds in form and substance and with surety satisfactory to the Owner, in the sum of Forty-five Thousand (\$45,000.00) Dollars, conditioned for the true and faithful performance of this contract on the part of the Contractor.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of:  
SCANDINAVIAN-AMERICAN BUILD-  
ING CO.

By CHARLES DRURY,  
President.

J. SHELDON,  
Its Secretary,

BEN OLSON COMPANY,  
Contractor,

O. B. OLSON,  
President.

(It was stipulated between Mr. Stiles and Mr. Oakley that although the defendants represented by Mr. Oakley had not filed an answer to the counterclaim of Ben Olson Company contained in its amended answer, nevertheless, it should be consid-

(Testimony of Ben Olson.)

ered that the allegations of the counterclaim were denied.)

WITNESS.—I saw Drury in reference to the waiver clause in the contract before signing it. I told Drury that this was an unusual [679] proceeding and before we could decide whether or not to enter this contract we should have to be shown how this building was going to be financed and we were going to get our money. He said they had arranged for a \$600,000.00 mortgage for completion of the building, and I asked him: "How are you going to finance it up to that point?" He said the bank would carry the building project up to that point. He said: "In fact we are assured by the Bank Commissioner." I think he said, or the bank examiner, "that we can carry the whole thing if we want."

Later I saw Mr. Larson and had a long talk with him and he covered the same ground as Mr. Drury, that the money had all been arranged for, the mortgage had been secured, and the bank was carrying the project until the other funds were available. Upon these assurances we executed the contract and furnished materials and performed work. Without these assurances being given we would not have entered upon that contract at all, because I would not have considered it safe. I believed what those men told me. This contract provided for a completed construction of the building in about ten months and we immediately ordered all the material with instructions to procure as early delivery as possible. The bulk of material was or-

(Testimony of Ben Olson.)

dered from Crane Company. There was delay in the progress of the work. In the spring there was excavating and there was concrete work being done, and the foundations were being put in; prepared for the steel; and we ordered our materials and got delivery on pipe.

In the latter part of June we got delivery of a carload of pipe and had to clear away a space to store it on the building site. In July we presented an estimate or statement of what material was on hand. A paper shown me is Estimate No. 1, which included the first carload of pipe and some soil pipe, also which was delivered to the building. That bill amounted to \$8,541.03, including a small amount of labor. That estimate was approved and payment made in accordance with the contract of 75%. The paper admitted [680] as Exhibit 253 (Stiles), as follows:

**Defendant's Exhibit No. 253.**

**(Stiles.)**

Tacoma, Washington, July 1, 1920.

Sold to:

SCANDINAVIAN-AMERICAN BANK BUILD-  
ING CO.

Estimate No. 1 for Contract Plumbing and Heating.

To 6" soil pipe and fittings for cement

alley .....	57.00
-------------	-------

4" galv. iron pipe fitting water supply	
---	--

on 11th Street side .....	40.00
---------------------------	-------

Cartage on carload of pipe .....	48.00
----------------------------------	-------

Labor to date unloading pipe putting pipe	
in rear .....	163.00
Carload of pipe as per attached invoice ....	8,233.03
	<hr/>
	8,541.03
Less 25% .....	2,135.26
	<hr/>

Notations.

O. K.—S. WELLS.

Cr. Contracts. Ck. 346 \$6,405.77  
BEN OLSON COMPANY,  
By M. O. HERBER,  
Secty.

ORIGINAL.

FARRINGTON & BARNUM, INC.,  
Auditors,  
W. N. M.

25% is held back according to contract.

Entered D. B. 7/1—110. I. R. Page 18. [681]

Tacoma, Washington, July 1, 1920.

Sold to:

SCANDINAVIAN-AMERICAN BANK BUILD-  
 ING CO.

1241-5 1½ blk. Genuine W. I.

Pipe		10.38..\$ 128.85
1842-10 1¼" do		26.37.. 485.93
1350-0 1½ do		31.53.. 425.65
764-0 2½ do		70.50.. 538.62
64-1 3½ do		111.16.. 71.14
125-10 5 do		178.42.. 224.20
134-3 6 do		231.36.. 310.59



255-10	8	do	312.24..	798.81
2076-10	3/4	Galv. genuine W. I.		
	Pipe		15.89..	329.91
1463-1	1 1/4	do	30.25..	442.60
3325-6	1 1/2	do	37.96..	1262.52
1182-8	2 1/2	do	81.62..	965.27
148-2	3 1/2	do	128.42..	190.15
768-7	6	do	267.87..	2058.79
				<hr/>
				8,233.03

Notations.

FARRINGTON & BARNUM, INC.,  
Auditors,  
W. N. M.

BEN OLSON COMPANY,  
By M. O. HERBER,  
Secty.

O. K.—S. WELLS.  
ORIGINAL. [682]

Tacoma, Washington, April 14, 1920.

Sold to:

SCANDINAVIAN-AMERICAN BANK BUILD-  
ING CO.

To 5 ft. 4" X. H. Pipe .....	8.00
1 ft. 4" 1/4 Bend .....	2.00
3# Lead .....	.45
1# Sheet lead .....	.20
1—2nd hand cellar drainer .....	10.00
1 tank 24x40x20 Sheet Iron .....	5.00
27 ft. 3/4" Galv. ....	2.25
15 ft. 3/4" Blk. ....	1.50

1—2d hand Globe Valve .....	1.00
1—2x1¼ tee Galv. ....	1.90
1—1¼x¾ Bushing .....	.20
5—¾" Ells .....	1.00
1—¾" Union .....	.40
4—¾" Nips .....	.40
5—¾" Straps .....	.20
Putting in Tank and cellar drain .....	10.05
	<hr/>
	44.55

To taking care of drainage from old drain through Pacific Ave. retaining wall and lifting water to curb during building operations.

Notations.

Ck. 346.

FARRINGTON & BARNUM, INC.,  
Auditors,  
W. N. M.

BEN OLSON COMPANY,  
By M. O. HERBER,  
Secty.

O. K.—S. WELLS.  
ORIGINAL.

Cr. AP.

Entered D. B. 7/1—110. I. R. Page 18. [683]

Later we presented another estimate No. 2, for the second carload of pipe and other material, including some labor, amounting to \$7,972.83. That estimate was approved in the same manner as the other and a sum equal to 75% thereof was paid. Estimate No. 2 produced and admitted as Exhibit 255 (Stiles), as follows:



Defendant's Exhibit No. 255.  
(Stiles.)

Tacoma, Washington, S Aug. 30, 1920.

Sold to:

SCANDINAVIAN-AMERICAN BANK BUILD-  
ING CO.

Car Load Pipe—Estimate No. 2.

2769	ft.	7"	¾"	Blk @	13.20.....	\$ 365.59
2588	2"	1"	"	Pipe	19.50.....	504.70
1208	5"	2"			45.66.....	551.76
832	7"	3"			92.94.....	773.49
202	11	4			131.32.....	266.46
56	1	10"			339.70.....	191.51
2587	6	½"	Galv.		12.93.....	334.56
1340	8	1"	"		23.53.....	315.46
1455	4	2"	"		53.25.....	721.71
2806	11	3			107.53.....	3018.27

City Water meter and service charge.... 450.00

Material and Labor making connection

with storm in 11th St..... 42.00

100 ft. 4" Blk. Pipe for Temp. Closet.. 131.32

Soil Pipe and fittings " " ..... 74.00

Water Pipe and fittings " " ..... 15.00

Galv. iron tank and trough for temp.

Closet ..... 52.00

Labor unloading pipe and putting in

temporary closets and putting in water

service and storm sewer..... 166.00

7972.83

53.56

Notations

8026.39

8026.39

ENTERED.

Pay 75%

6019.70

D. B. 9/3—153

I. R. Page 24

25%

\$2006.60

Ck #530

9/25/20

O. K.—S. WELLS.

FARRINGTON & BARNUM, INC.,

Auditors,

W. N. M. [684]

Exhibit 256 is the check of the Scandinavian-American Building Company for \$6,019.79, representing payment for seventy-five per cent of estimate No. 2. That exhibit reads as follows:

**Defendant's Exhibit No. 256.**

No. 530

SCANDINAVIAN-AMERICAN BUILDING CO.

Tacoma, Wash., Sept. 25, 1920.

Pay to the Order of BEN OLSON COMPANY  
\$6,019.79. Six Thousand Nineteen and 79/100 Dollars.

SCANDINAVIAN-AMERICAN BUILD-  
ING CO.

By J. SHELDON,  
Secty.-Treas.

To SCANDINAVIAN-AMERICAN BANK,  
34-5 Tacoma, Wash.

(Reverse)

SCANDINAVIAN-AMERICAN BUILDING CO.

Tacoma, Wash., Sept. 25, 1920.

To BEN OLSON COMPANY,  
Tacoma, Dr.

In full for invoices as follows:

Aug. 30th, Pipe, etc.....	\$8,026.39
Distribution, Ben Olson Co., 75%	6,019.79
(Reverse)	

Endorsed: Ben Olson Company. By M. O. Herber, Secty.

WITNESS.—We received no other sums of money in payment. We did get the radiators.

(Testimony of Ben Olson.)

To check up the items of the estimate, the Building Company, when the pipe was being delivered, sent their man down to Crane Company as it was unloaded and checked it and then we took it over to the building.

Again, on January 4th, 1921, we submitted another, Estimate No. 3, covering labor and material, amounting to \$19,050.90. This estimate was approved by the superintendent, Mr. Wells, and sent to the office for payment, but it was not paid. The materials [685] and supplies representing the estimate were on hand and were checked up by the representative of the Building Company. They were at the building with the exception of some pumps that I could not store there. Estimate No. 3 admitted as Exhibit 257 (Stiles), as follows:

**Defendant's Exhibit No. 257.**

(Stiles.)

Tacoma, Washington, January 4, 1921.

Sold to:

SCANDINAVIAN-AMERICAN BUILDING CO.

Estimate No. 3.

Nov. 11, 2410' 11 -4" galv. pipe 151.35..\$ 3,648.95

Dec. 20, Galvanized drainage fittings

from B. O. stock..... 540.50

" 20th, Galv. drainage fittings from

Crane Co..... 2,445.45

86" Hulbert Fittings for

closet drainage..... 1,720.00

Malleable Galv. fittings..... 1,864.74

Galv. nipples (only)..... 557.40

Cast iron steam fittings.....	960.26
2 House pumps.....	1,134.00
1 Sump pump.....	474.00
17 sets hose and racks.....	1,542.00
Valves for branches.....	265.60
Steam radiator valves and main steam trap.....	2,460.00
1 -42x120 hot water gen. with steam coil.....	650.00
Labor—Plumber, 44 days)	
Fitter, 7 “ )	
Helper, 20 “ ).....	679.00
Superintendent of Plumbing and Heat- ing.....	100.00
	<hr/>
	19,050.90
	<hr/>
	19,050.90
Less 25%.....	4,762.73
	<hr/>
	\$14,288.17

I have gone over this bill thoroughly and find materials listed either on the job or at Ben Olson Co. Shop.

O. K.—S. WELLS.

FARRINGTON & BARNUM, INC.,

Auditors.

W. N. M.

Notations:

Entered, D. B.  $\frac{1}{6}$ -244. I. R. page 54. [686]

When the material in Estimate No. 3 came into our possession, the building was in the course of

(Testimony of Ben Olson.)

construction and there was steel scattered all over, and there was no room for storage of any great amount of material. Some of this material was detained at our shop or warehouse. I recall the pumps; two house pumps and one sump pump, seventeen sets of hose racks and some steam radiator valves. This material was certified by Mr. Wells and yet left at our warehouse because they did not have a proper storage place for it to protect it from the weather. It was material that would be ruined if it got wet. The building was all open.

Later still another small amount of material was brought and which we call Estimate No. 4, which, with the labor entered therein amounted to \$2,131.23. This estimate was never presented, though they were furnished at the building. The materials amounted to \$1,001.43 and the labor, \$1,129.00. Estimate No. 4, admitted as Exhibit 258 (Stiles), as follows:

**Defendant's Exhibit No. 258.**

**(Stiles.)**

Tacoma, Washington, Jan. 15, 1921.

Sold to:

Scandinavian-American Building Co.

Estimate No. 4.

Hangers and Angle Iron.....	\$11.50
Dynamo, threading, cutting Oil.....	5.50
Steel rods for Hangers West Steel..	31.50
Hose, couplings and arco sealit....	25.00
1—6" X H Y.....	5.60

1 6 X H 1/16 Bend.....	3.24
1 X X H 1/ 6 Bend.....	4.02
30—5/16 X 6½ saddle clips).....	
30—5/16 X 8 “ “ ).....	
30—7/16 X 11 “ “ ).....	
30—7/16 X 14 “ “ ).....	35.81
2—6" Galv. Dry 45 Deg. ells.....	22.00
Hanger Irons.....	6.00
1 6x3 Bushing.....	2.38
1—6" long galv. nip.....	3.20
2—4" galv. Dr. 90 L. T..... 10.50	21.00
2—6" galv. Dr. 45 Deg. ells..... 11.00	22.00
3—6" “ “ 45 ..... 11.00	33.00
3—6" “ “ ..... 11.00	33.00
4—6x4 Tees ..... 22.00	88.00
Blacksmith Coal.....	6.00
1—6xH1/8 Bend.....	2.50

[687]



Estimate 4—Exhibit No. 258 (Continued).

6—4" close Galv. Nip.	1.05	6.30
1—6 x 4 bushing		2.38
300 ft. $\frac{1}{8}$ x 1 Band Iron)		
50 ft. $\frac{1}{4}$ x 1 Band Iron)		
100 ft. $\frac{3}{8}$ x 2 " " )		
200 ft. 1 x $\frac{1}{4}$ stove bolts)		35.06
16 ft. 3" 4 Ply rubber belting		5.92
Lumber, 6" pipe and threads		28.50
12—3" plugs	.50	6.00
128—4" Plugs	.82	104.86
25—1 $\frac{1}{4}$ Plugs	.10	2.50
4—2" Plugs	.15	.60
12—2 $\frac{1}{2}$	.35	4.20
12—1 $\frac{1}{2}$	.10	1.20
4—6" Plugs	2.40	9.60
65—1 $\frac{1}{2}$ Caps	.45	29.25
25— $\frac{3}{4}$ "	.20	5.00
25—1" "	.26	6.50
		<hr/>
		45.75
	25%	10.19
		<hr/>
		30.56
3 Pcs. 6" galv. pipe 3 $\frac{1}{2}$ ft.		10.60
Cutting and threading		3.50
1—3" expansion joint)		
1—8" " " )		150.00
Ajax Electric Co. Wiring		78.31
City of Tacoma meter installed		72.00
4—6 x 4 Dr. Galv. tees	22.00	88.00
		<hr/>
		1,001.43
Laborer 55 days @ 6.00	330.00	
Blacksmith 10 " @ 7.68	76.80	
Plumbers 57 " @ 9.00	513.00	
Fitter 10 " @ 9.00	90.00	
Superintendent	100.00	
Cartage	20.00	1,129.80
		<hr/>
		2,131.23
		2,131.23



(Testimony of Ben Olson.)

WITNESS.—When this action was commenced, we applied for leave to withdraw certain of the materials to the amount of some \$4,900.00. The items were taken from Estimates Nos. 3 and 4. The order of the Court gives the items and values as set down in those estimates. Copy of order admitted as Exhibit 259 (Stiles) as follows: [688]

**Defendant's Exhibit No. 259.**

(Stiles.)

In the United States District Court for the Western  
District of Washington, Southern Division.

No. 117—E.

McCLINTIC-MARSHALL CO.,

Plaintiff,

vs.

SCANDINAVIAN - AMERICAN BUILDING  
COMPANY,

Defendant.

BEN OLSON COMPANY,

Petitioner.

**ORDER TO RECEIVER.**

The above-entitled cause having come on to be heard upon the petition of the Ben Olson Company, a corporation, for the order of this Court directing Forbes P. Haskell, heretofore appointed by the Court its Receiver to take possession of and hold the property of the Scandinavian-American Building Company to allow the petitioner to take possession of and remove certain material, tools, and ma-

chinery claimed by petitioner to be its property, and to have been taken possession of by said Receiver, and to be withheld by him from the possession of petitioner; and the matter of said petition having been heard by the Court, Present: Messrs. Stiles & Latcham and J. F. Fitch, Attorneys for petitioner, and Messrs. Guy E. Kelly and Frank D. Oakley, Attorneys for the Receiver; and the Court being fully advised in the premises, finds that the petitioner, Ben Olson Company, is the owner and entitled to the possession of the following described materials and personal property in the possession of said Receiver, to wit:

Galvanized Drainage Fittings, from

B. O. Stock.....	value	\$540.50
Malleable Galvanized Fittings.....	"	1,864.74
Galvanized Nipples (only).....	"	557.40
Cast Iron Sleeve Fittings.....	"	969.26
1—42x120 Hot Water Generator, with steam coil.....	"	650.00
16 ft. 3" 4 Ply Rubber Belting.....	"	5.92
12—3" Plugs.....	"	6.00
128—4" Plugs.....	"	104.85
25—11¼" " from Ben Olson's Stock.....	"	2.50
4—2" Plugs.....	"	.60
12—11½" Plugs.....	"	4.20
12— 11½" " .....	"	1.20
4— 6" " .....	"	9.60
65— 11½" Caps.....	"	29.25
25— ¾" " .....	"	5.00

(Testimony of Ben Olson.)

25— 1" " ..... " 6.50

1— 3" Expansion Joint).....

1—8" Expansion Joint)..... " 150.00

And the Court further finds that, for the reason that the vendor of the other materials claimed by petitioner in its petition, the Crane Company, which furnished the same, has filed a lien therefor against the building and property for which they were furnished, said Ben Olson Company, is not entitled to the possession of the same.

WHEREFORE, by reason of the premises and the law, IT IS ORDERED that the Receiver of this court, the said Forbes P. Haskell, is directed to allow said Ben Olson Company to take and remove the materials hereinabove scheduled.

EDWARD E. CUSHMAN,

Judge. [689]

Q. In fixing the value of these various items, what method would you follow? A. We used the same value as we used in estimating the job.

Q. In estimating the job, did you estimate the expenses of the several items as they would come along? A. Yes. Q. And then you put in your bid for \$91,000? A. Yes. Q. In making up those estimates and making these charges, and these two calculations, did you use these same values? A. Yes.

We continued to work on this material we had stored in the building up to the time of the close of the bank, when all work was suspended on January 15, 1921. Consequently we made up and filed a lien notice. (Court grants leave to de-

fendant to amend its lien notice by inserting the name "American" where omitted in the name of the bank and Building Company in the notice.) The lien notice admitted as Exhibit 260 (Stiles), as follows:

**Defendant's Exhibit No. 260.**  
**(Stiles.)**

**NOTICE OF LIEN CLAIM.**  
**593796.**

**BEN OLSON COMPANY**, a Corporation,  
Claimant,

vs.

**SCANDINAVIAN-AMERICAN BANK OF TACOMA** and *SCANDINAVIAN BUILDING COMPANY*,

Respondents.

**LIEN CLAIM NOTICE.**

Notice is hereby given that on the 27th day of February, 1920, Ben Olson Company, a corporation organized and existing under the laws of the State of Washington, and having its place of business at Tacoma, Pierce County, was, at the request of the Scandinavian-American Bank of Tacoma, and the *Scandinavian Building Company*, employed to furnish and construct all the plumbing and heating plant for the building thereafter partially erected by said Bank and Building Company, upon Lots 10, 11 and 12, in Block 1003 of the Official plat of "New Tacoma W. T.," filed and recorded in the

Office of the Auditor of said Pierce County, February 3, 1875, of which property the owners and reputed owners were, and are, the said Scandinavian-American Bank of Tacoma, and Scandinavian-American Building Company.

That said Ben Olson Company commenced to furnish the materials for said plumbing and heating of said building, and to perform said labor of installing said materials on or about June 20, 1920, and continued to furnish said materials and perform said labor until January 15, 1921, when further construction of said building by said owners, and their refusal to further prosecute the same.

That the value of the materials so furnished by said Ben Olson Company was as follows, viz:

1. Materials actually furnished and deposited upon the premises for installation on	\$30,560.86.
[690] 2. Materials procured by said Ben Olson Company to be manufactured specially for said building, according to the plans and specifications for the plumbing and heating therein, and delivered by the manufactures to said Ben Olson Company in the City of Tacoma ready for use in said Building	.....\$21,293.42
Total materials	.... 51,856.28

That the value of the labor performed in the installation of materials in said building was \$2,237.80. That no part of the value of said materials and labor has been paid except the sum of \$12,425.56, paid on account of materials deposited on the premises and the labor thereon; and



(Testimony of T. L. Stiles.)

That the said Ben Olson Company claims a lien upon the property above described, for the unpaid portion of the value of said materials and labor, in the sum of \$41,666.52, less the amount of any lien which may be allowed to the Crane Company for materials furnished by it to said Ben Olson Company, for use in said building.

BEN OLSON COMPANY.

By O. B. OLSON,  
President.

Verified and recorded April 14th, 1921.

We claim that the Scandinavian-American Bank is really the party liable to us for this debt.

Witness was temporarily withdrawn.

**Testimony of T. L. Stiles, for Defendant, Ben Olson Company.**

T. L. STILES, called on behalf of defendant, Ben Olson Company, duly sworn, testified:

As attorney for Ben Olson Company, on the 6th day of May, 1921, I carried and delivered to Mr. Haskell, Special Deputy Supervisor of Banking, a proof of claim on behalf of the company, with the statement attached to it that I hold in my hand, —copy of that statement attached I hold in my hand. On the following day I received from Mr. Haskell a refusal of the demand, which I also hold in my hand.

I ask that these two papers be admitted in evidence as exhibits. Papers admitted as Exhibit 261 (Stiles), as follows:



**Defendant's Exhibit No. 261.****(Stiles.)****STATEMENT.**

On the 27th day of February, 1920, the undersigned, Ben Olson Company, a corporation, entered into a written contract nominally, with the Scandinavian-American Building Company, by its President, Charles Drury, though as it appears, in fact, with the Scandinavian-American Bank of Tacoma, to furnish the materials and labor for the plumbing and heating of the building, then about to be commenced on Lots 10, 11, and 12, Block 1003, in the City of Tacoma, for the price [691] of \$91,000.00.

The furnishing of materials and the performance of labor under said contract was commenced in July, 1920, by this Company, and continued from time to time, until work on the building was discontinued, January 15, 1921.

Within the time mentioned, this Company furnished for said work, certain materials and procured and had on hand other materials fashioned for and adapted for said work all of the value of ..... \$51,802.09  
And labor of the value of ..... 2,279.80

---

Total ..... \$54,081.89

To complete the contract, this Company would have had to provide and fur- nish additional materials of the value of .....	\$16,691.64
Additional labor of the value of .....	11,196.70
	<hr/>
	81,970.23

Wherefore its reasonable profit would have been .....	9,029.77
	<hr/>

Contract price ..... \$91,000.00

Therefore, the Scandinavian-American Bank of Tacoma, became indebted to this Company in the sum of the following items of the above:

Labor and material furnished .....	54,081.89
Reasonable profit on the Contract .....	9,029.77
	<hr/>
	\$63,111.66

But of the above sum there has been paid, the following, viz.:

July 1, 1920. By Radiators	\$1,000.00
July 13, 1920. By Cash ....	6,405.77
Sept. 24, 1920. By Cash ....	6,019.79
	<hr/>
Balance Due .....	\$49,686.10

Since furnishing the materials, and performing the labor above mentioned, this Company has learned that the Scandinavian-American Building Company was a corporation in name only, which was organized by the Scandinavian-American Bank of Tacoma, (which was the real subscriber for, and held and holds, all of the stock of the former) to

carry on the construction of a new bank building on the premises above described; and that, in fact, the Building Company was merely the agent of the Bank, in all that it did in that behalf.

For these reasons, this Company maintains that the above balance is due to it from the Scandinavian-American Bank; and therefore makes this claim.

Respectfully,

BEN OLSON COMPANY.

By O. B. OLSON,  
President. [692]

#### PROOF OF CLAIM.

(By Corporation.)

Liquidating.

SCANDINAVIAN-AMERICAN BANK OF TA-  
COMA.

Tacoma, Washington.

State of Washington,  
County of Pierce,—ss.

Personally appeared before me the undersigned, a Notary Public in and for said County and state, O. B. Olson, who, being duly sworn, on his oath says that Ben Olson Company is a corporation organized and existing under the laws of the State of Washington, having its principal place of business at Tacoma, Pierce County therein; that he is the President of said corporation and makes this Proof of Claim for and in its behalf; that he is authorized so to do, and that the seal affixed hereto is the corporate seal of said corporation; that the

Scandinavian-American Bank of Tacoma, Tacoma, Washington, is justly indebted to said corporation in the sum of Forty-nine Thousand Six Hundred Eighty-six and—Dollars and ten (10) cents, upon the following, to wit:

For materials, labor and profit on Contract as set forth in the annexed statement which is made a part hereof ..... \$49,686.10

All of which is due and payable to said corporation alone, it having given no endorsement or assignment of the same or any part thereof, and affiant further says that he knows of no offset or other legitimate or equitable defense to said claim, or any part thereof, except that said corporation is indebted to said Scandinavian-American Bank of Tacoma on the following:

Offset Balance Due Bank on Promissory		
Note for \$2,000.00	\$518.37	581.37

Total .....	\$49,104.73
Name—BEN OLSON COMPANY.	

O. B. OLSON,  
President.

Address—1130 Commerce Street, Tacoma.

Subscribed and sworn to before me this 6th day of May, 1921.

[Seal]

M. M. MILLER,  
Notary Public, Residing at Tacoma.

(Testimony of Ben Olson.)

SCANDINAVIAN-AMERICAN BANK

of

TACOMA, WASHINGTON.

May 7, 1921.

Ben Olson Company,  
1130 Commerce Street,  
Tacoma, Washington.

Gentlemen:

I am in receipt of your proof of Claim for \$49,-  
686.10. You are hereby notified that this proof of  
claim has been disallowed and disapproved by me.

Yours very truly,

F. P. HASKELL, Jr.,

Special Deputy Supervisor of Banking. [693]

**Testimony of Ben Olson, for Ben Olson Company  
(Recalled).**

BEN OLSON recalled.

(By Mr. STILES.)

There was considerable other material acquired  
by us which was not taken to the building. Ma-  
terial not covered by four estimates in evidence.

Mr. OAKLEY.—If the Court please, I wish to  
object to the question for the reason that he is not  
entitled to a lien for materials not delivered on the  
premises.

The COURT.—Well, if delivery, either actual  
or constructive, has been waived, another rule might  
apply and I cannot tell until I hear the testimony.  
I do not know whether it is lienable or not. The  
objection will be overruled.



(Testimony of Ben Olson.)

WITNESS.—There were a number of lavatories and wash-basins. In getting this stuff we placed orders with instructions to rush delivery. The orders were placed with Crane Company located in Tacoma. Crane Company is a jobber of plumbing supplies. These supplies ordered consisted of fixtures for the building. By fixtures I mean toilets, lavatories, urinals, and all other fixtures that are placed in the finished building. They were a special order, ordered especially for that job. They arrived early in January, I think most of them. They were not taken to the building. They were stored with Crane Company here in this city. I do not recall that we notified the Building Company or its representatives of the fact that these materials were here, but all work was suspended and of course we could not make delivery. The premises were in such condition that that kind of material could not have been safely delivered in the premises because it was exposed to the weather; no roof on it. (Papers shown to witnesses.) The paper shown me called Exhibit No. 5, is a list of part of the stuff I have been speaking about. That represents the closets; eighty-six closets of the value of \$91.31 each, in all, \$7,825. I think there is a credit [694] thereon of \$1,720.00. That is the same \$1,720.00 included in estimate No. 3. The closets were composed of two parts, one part used in roughing in, put in place when we placed the pipes into the building, that is, placed in the building at the time and is called the Hurlbut fitting. That is part of



(Testimony of Ben Olson.)

that order and charted in our estimate No. 3. This which we call Estimate No. 5, is the balance of the materials for the closets, part of which has already gone into the building, though not put in place. Estimate No. 5 admitted as Exhibit 262 (Stiles) as follows:

**Defendant's Exhibit No. 262.**

(Stiles.)

January 31, 1921.

Scandinavian-American Bank Building Co. Estimate No. 5.

To 86 closets complete Crane Co. Wall

Outlet with B2341 connected flush valve, with B3438 Whalebonile Mahogany Finish Seat and Crane Hurlbut Drainage Fitting @ complete

@ ..... 91.31, \$7,852.66

Less Charge of Hurlbut fitting charged in

Estimate No. 3, dated Jan. 4, 1921 .... 1,720.00

---

\$6,132.66

NOTE: Above charge represents Balance of an uncompleted shipment, part of which was necessary to have on Building in roughing in.

Q. Now, could those things, Mr. Olson, be used to any advantage to any other building? A. No. The toilet bowls are no good without Hurlbut fittings, and could not be used anywhere without those fittings, and the valves were a special construction and were ordered for that particular job, made in a

(Testimony of Ben Olson.)

certain way. The valves for these toilets were ordered made.

We have still another list of items for the building which we call Estimate No. 6. They consist of thirty-three *soild* porcelain urinals with air controlled flush valves; twenty-four enameled lavatories for toilet rooms; 238 enameled lavatories for offices; sixteen slop sinks, 8 by 12, with trimmings; and 375 vacuum [695] valves for the radiators. The vacuum valves for radiators were delivered sometime previous to this, but we were unable to store them in the building. They were stored at our store, value \$2,250.00. We did not take them to the building because they required protection and there was no protection there, no cover for them. Other items on Estimate No. 6 were lavatories made especially for that building, fitted for Securo waste, which is not a standard equipment. The architect, in his specifications for this part of the work I think, specified Crane Company's goods. We ordered these goods according to specifications and I am sure that the lavatories were constructed specially. The urinals were solid porcelain. None of the goods in Estimates 5 and 6 were such as we would purchase for our establishment. They are only for buildings as they are needed; they are not carried by the jobbing houses. Estimate No. 6 admitted as Exhibit 263 (Stiles), as follows:

(Testimony of Ben Olson.)

**Defendant's Exhibit No. 263.****(Stiles.)**

Scandinavian-American Bank Building Company.

Estimate No. 6.

Merchandise ordered specially for the Building  
charged to us but not delivered to building:

33-18"	B4174 Solid Porcelain Urinals with outlet and inlet connections and air controlled flush valves @ 81.10	\$ 2,676.30
24	Enameled Lavatories with Securo waste B440 for toilet-room complete with all trimmings, traps, supplies and self-closing Basin cocks @ 48.70	1,168.80
238	Enameled Lavatories B487 with Se- curo Waste for Offices complete with all trimmings as above @ 34.77 . . . .	8,375.26
16	Slop sinks 18x22 B4984 Roll Rim slop- sinks with Back, trimmings complete with wood rim guards @ 49.70 . . . .	790.40
375	Vacuum valves for Radiation @ 6.00	2,250.00
		<hr/> \$15,160.76

Our company obligated itself for the payment of  
the cost of the items of these two Estimates No. 5  
and 6. They are charged to us by Crane Company  
and we are required to pay the bill. The valves,  
[696] however, were not procured from Crane  
Company, but some other concern.

At the time we entered into our contract, I did  
not know the real relation between the Scandina-

(Testimony of Ben Olson.)

vian-American Bank and the Scandinavian-American Building Company. Did not know that the Scandinavian-American Building Company organized in November, 1919, had never had a meeting of its Board of Directors at all, up to the time we entered into our contract with it, except its organization meeting. I did not know that its Board of Directors did not pass any resolution whatever on any subject up to that time.

Cross-examination.

(By Mr. OAKLEY.)

I first talked with Mr. Drury in regard to this contract. I don't think I asked him if he actually had the money on hand, from the \$600,000 mortgage. I did not mention to him that there were any mortgages on this building; did not know that there were mortgages of record in the Auditor's Office to the extent of \$70,000. Mr. Drury told me that they were going to put the \$600,000 mortgage on. I took it for granted that was going to be the mortgage on the property. I had no reason to think there were other mortgages there. I cannot say that I have ever had a parallel case to this, where a building was constructed and where it was known that a mortgage was being made. I knew that this \$600,000 mortgage was to be put on these premises at the time I signed this contract but the mortgage was to cover the completion money, not the beginning, as I understood it. I never was a stockholder in the bank. I testified here in court in April in reference to getting possession of certain materials that

(Testimony of Ben Olson.)

I had delivered. I do not know that I could pick out from Estimates Nos. 1 and 2, how much of the materials in those estimates I took back. I think Mr. Herber could. I do not know that the water generator, valued \$680.00 was made specially for this building. I do not think it was made specially for these toilets I have been [697] talking about. It was a standard make of tank, standard size, could be used any place. The toilet sets could be used any place where an architect would specify, cover exactly the same thing. They were not Crane Company's stock at all. You could not go and buy all of them without ordering it.

The reference in Exhibit 262, to B-2341, is to a special flush valve for a special setting. It is a catalog number, so is B-3458. Those are absolutely special; they do not carry them in stock. You will have to place a special order to get them. You cannot buy them in stock. Of the eighty-six closets, the Hurlbut fittings were delivered at the building. They were not taken away but are still there on the second floor. They are not built in. They were obtained from Crane Company. They fit with the closet, could not use them for anything else except that closet; they are part of the closet; are part of the combined stool and closet, fastened to it. I do not know of any office building in the City of Tacoma where these closets are used. One of them was delivered at the building, it was not put in place. The shipment arrived previous to January 5, 1921, was billed to us at that time; arrived here



(Testimony of Ben Olson.)

a short time previous to that. None of the material taken under the order of the Court, dated April 22, 1921, amounting to about \$4,900, is covered by the lien of Crane Company. I could not say whether any of it was purchased from Crane Company or not, if it was, it was a long time ago. A great deal of it is some that we carried in stock ourselves. I do not think the hot water generator was covered by a lien. It was not bought from Crane Company.

We did not take practically all of the items of Estimate No. 3 away from the building. All of the materials mentioned in Estimate No. 4 was delivered at the building.

In the Crane Company catalog shown me, on page 15, there is a detailed drawing of the fitting; part of the closet, that is shown on page 14, is simply the method of installation. Catalog admitted, marked Exhibit 264 (Here insert). Not to be printed; to be [698] forwarded to Clerk of Circuit Court of Appeals.

(By Mr. METZGER.)

I am of the impression that the fixtures in this building are specified in the contract to be taken from Crane Company's catalog. I would not say that positively. Being shown specifications, I find that the Crane Company lavatories, closets, etc., were specified. The urinals mentioned in Estimate No. 6, Exhibit 263, described as B-4174, are as portrayed on page 467 of Crane Company's catalog. The next item on Exhibit 263 is for



(Testimony of Ben Olson.)

certain enameled lavatories described by the number B-440. They are not of Crane Company make. They were made by the Pacific people in this case. The specifications called for a Crane Idalia Victor lavatory but that was changed before the contract was entered into. We bought them from Crane Company but they were products of the Pacific Company, which manufactured all these goods. They were of the same type as Crane Company B-440 but fitted with a Securo waste; that is what made it special. The Securo waste is something like that indicated in the catalog but no other concern has one similar to this. This specification of the architect as to lavatories was changed. We bid in the first place on vitreous china lavatory and then we bid on enameled iron lavatories, as an alternative, which cost several thousand dollars less, and the architect decided on the enameled iron lavatory in order to reduce the cost. The contract price was changed some four or five thousand dollars. On page 39 of the specifications it says that the fixtures, under the heading "Plumbing Fixtures," are taken from the Crane Company catalog and circular No. 531-B. That applies to urinals, lavatories and all of these. Referring again to Exhibit 263, the lavatories B-47, is the same as is shown on page 93 of the catalog with the exception of this Securo waste. Crane Company includes the Securo waste only in special cases. It is not an ordinary stock waste; it is a larger waste than the ordinary waste and for

(Testimony of Ben Olson.)

that reason the patterns of the lavatories [699] had to be changed to fit it. They manufactured it but I could not say if they carry it in stock. The rolled rim sink, the same as shown on page 576 of the catalog, designated as B-4984; probably none of the materials covered by our estimates in evidence, is not described or included in the general plumbing catalog such as the Crane Company issues.

The carload of pipe included in Exhibit 253, was bought from Crane Company. All of this material for which we are making claim was furnished under the contract, Exhibit 242. We were to furnish it and install it in the building. We did not take any of that carload of pipe back.

The Hurlbut fittings taken in conjunction with the items intended to be covered by Estimate No. 5, Exhibit 262, constitute the complete closet. Those fittings are under part of the closet which is installed as the work of erection of the building goes along, leaving the top part and the feet to be put on after the building nears completion. They were over there in the building uninstalled. With these fittings and the other material which is in Crane Company's warehouse, we would have complete closets suitable for installation in any public building where they were specified. All of the material covered by Estimate No. 6, Exhibit 263, is in Crane Company's warehouse except the last item, 375 vacuum valves. The warehouse is at 12th and A Street, in this City. The

(Testimony of Ben Olson.)

valves were procured from C. A. Dunham & Company. They are manufacturers of steam supplies, represented here by Godfrey-Jones Company. I do not recall whether they were specially prepared or not, they were substituted by Mr. Drury for the originally specified valves. I do not know why. Those valves are now at our store, they could be used on any type of radiator but only where that particular system of heating is in use; I mean the vacuum system of steam heating. The things on Estimate No. 5, Exhibit 262, are at the Crane Company warehouse. The material covered by Estimate No. 4, Exhibit 258, was all delivered at the building; the [700] greater part of it was taken back. None of it was procured from Crane Company.

Of estimate No. 3, Exhibit 257, I cannot tell offhand what was delivered to the building, I recall the pumps, they were in our possession and they were purchased from Fairbanks, Morse Company. The second item came from our stock; the third from Crane Company. The fourth item from Crane Company, the fifth, sixth and seventh items from some other jobbing house, being ordinary stock carried by any jobbing house. The pumps were from Fairbanks, Morse Company, the hose racks from the United States Rubber Company on A Street, and these valves designated as valves for branches, were from our own stock. The hose and racks were never delivered. The specifications show the type of the fixtures, except where

(Testimony of Ben Olson.)

changes were made before the contract was entered into.

Redirect Examination.

(By Mr. STILES.)

Ben Olson Company is a corporation organized in the State of Washington, doing business in Tacoma. We had paid our last taxes to the State. If we had been allowed to go ahead with our contract we would have completed it according to the terms.

Referring to Exhibit 251, our proposition to the Company, in which we say that this bid is based upon the plans and specifications prepared by Mr. Webber, Architect and Engineer. That is the changed specifications. It was accepted with the understanding that it was to be used. It included two pumps as per specifications, and also one steam pump. There were other slight changes made from time to time in the specifications. One of the changes made was to the Dunham trap. A Warren and Webster trap had been specified. When Mr. Wells accepted the items contained in estimate No. 3, he knew that part of them were in our possession, at our warehouse.

Recross-examination.

(By Mr. METZGER.)

Mr. Wells O. K.'d the estimate and put it in line for payment. [710] He checked it all off, and that is what I base my statement on,—that he accepted those articles.

(Witness excused.)

**Testimony of M. O. Herber, for Ben Olson Company.**

M. O. HERBER, called by Ben Olson Company, sworn, testified as follows:

Direct Examination.

(By Mr. STILES.)

I reside in this city. I am secretary of Ben Olson Company; have been since 1904 with the exception of one year. I am acquainted with the transaction between Ben Olson Company and the Scandinavian-American Building Company. My connection with it was in formulating the original estimates and assisting Mr. Olson, and later on in looking after the details of the job. In addition to my secretaryship, I was purchasing agent and general or assistant manager when Mr. Olson was absent. I am accustomed to making up estimates and entering into arrangements of this kind, have been for a little over 20 years; have been connected with the plumbing business twenty-one years with the Ben Olson Company. I attended a general conversation at the Tacoma Hotel with Mr. Drury, Mr. Olson, G. Wallace Simpson and Architect Webster. That was some time previous to the signing of the contract; between the 1st and the 27th of February. I remember there was some talk of the plans of the finances. The statement was made that it was all financed, and there might be fifteen or twenty thousand at the end that might have to be taken care of. A statement was made by Mr. Drury that it was all



(Testimony of M. O. Herber.)

financed, and might be a question of \$15,000 or \$20,000 implicating, we might have to take a little bonds, but there was no deals made or reservations made. The building was to cost over a million dollars and there was to be a mortgage of \$600,000. They said it was fully financed. There was no question about that payment. We were given the full assurance that it was and that our money would be forthcoming every month according to that 75% clause. I do not recall that anything was said [702] about the other \$400,000 except the statement that it was fully financed and the bank would take care of it except the \$20,000.00. They did not tell us that on or about February 10th, two or three weeks before our contract was entered into, the Scandinavian-American Bank and the Scandinavian-American Building Company had fixed up an arrangement by which there was to be a \$750,000 mortgage, second mortgage, go on that property and that \$350,000 was to be ahead of any contract. I never knew until lately here in this hearing that any such scheme as that had been arranged. After receiving the contract we were under the impression and had been given the idea that this building was going to be rushed; consequently it was up to us to hold our end up, and in order to do that it was necessary to place the orders, because it was practically all an unusual job and consequently special, and in fact the pipe itself was a special wrought iron instead of a steel pipe as is usually



(Testimony of M. O. Herber.)

used, and the fixtures all special in design and particularly as to the quantity of them; it was necessary to have all of these details carried out, and we immediately placed the order just as fast as we could assemble our estimating, in order to conform to the somewhat numerous changes that had been made; and placed the orders with the understanding, particularly with the understanding to rush the material through as fast as possible, and I remember particularly in regard to the closets, the manager of Crane Company and myself went over the details, stating that those closets would have to be manufactured special for the job, and consequently it was necessary to get the order in as early as possible in order that they would have the goods here when needed.

I am familiar with the various estimates that have been presented here. In addition to the estimates for material, some labor was performed, which is included in those estimates. That labor was actually performed.

WITNESS.—Handed estimate No. 1. Q. Now take Estimate No. 1 and [703] just give the Court briefly the actual condition of that estimate as presented in this claim, that is segregate the material and labor, and show how much there is of each.

WITNESS.—A. The total claim is \$8,541.03. The labor item \$163. The material furnished \$8,358.03. On this estimate there was paid 75%. Q. Now take Estimate 2 the same way.

(Testimony of M. O. Herber.)

WITNESS.—A. Total estimate No. 2, \$7,972.83. On which labor was \$208, leaving merchandise only \$7,764.83, on which estimate there was paid 75%, \$6,019.75. Q. Take Estimate No. 3. A. (WITNESS.) Total \$19,050.90; labor \$779. Out of this estimate there was taken away items totalling \$4,581.90, leaving at the building \$7,814.40. There was over at our warehouse five items totalling \$5,875.60. These four segregations make the total estimate. The \$4,581.90 has been entirely deducted and is not included in this lien at all. The \$779 of labor we claim at another place. \$5,875.60 worth of items are at our warehouse and on the premises, \$7,814.40 worth. Q. Now, Estimate No. 4. A. (WITNESS.) The total material charged is \$1,001.43 out of which we took away \$325.62 worth, leaving at the building \$675.81 worth. Labor, \$1,129.80. Q. Can you go over the estimates and recapitulate the amount of each claim and the total amount of the claim of Olson & Company on those four estimates. A. (WITNESS.) Estimate No. 1, material, \$8,378.03, all at the building, and labor \$163 actually performed, on which seventy-five per cent was paid.

Estimate No. 2, material only, \$7,764.83, all at the building; labor \$208, actually performed, upon which seventy-five per cent was paid.

Estimate No. 3, total \$19,050.90, segregated as follows: Labor \$779, actually performed, material left at the building, \$7,814.40, and material taken

(Testimony of M. O. Herber.)

back and given credit for, taken out on the order, \$4,581.90, held at our shed, \$5,875.60, on which none has been paid. That is Estimate No. 3.

Estimate No. 4, total delivered at the building, \$1,001.43, and we took back and gave full credit on Estimate No. 4, \$325.62, [704] leaving \$675.81 actually at the building; labor \$1,129.80.

We have another item at the shop consisting of 375 vacuum valves which are in our Estimate 6 to follow; the amount of these valves is \$2,250, this makes a total of \$8,125.60 at our building.

Our estimate No. 5 is a balance of material only \$6,132.66. Estimate No. 6 is for \$12,910.75, from Crane Company. The other item for \$2,250 for vacuum valves we have at our shop. I have included labor with Estimates 1, 2, 3 and 4, amounting to \$2,279.80. Estimates 1, 2 and 3 were submitted to the Building Company. The items in Estimate 4, were actually furnished. Estimate 5 is the balance. That is really the balance on the toilets; there was a partial delivery made on the toilets at the building. The items represented by Estimates 5 and 6 are here ready to be delivered when accepted and that is the case with all of the material which we have in storage.

Q. Now, Mr. Herber, about this material on Estimate number 3, which is at your warehouse, just state to the Court how that material came to be in the warehouse. A. The understanding I had with Mr. Wells, they were to receive delivery of the material which had been received. It had

(Testimony of M. O. Herber.)

been expected that the building would be ready before the material got here. On account of the delay in the building, considerable of that material was assembled and we were anxious to deliver it at the building and find a place for it, and so we met with Mr. Sherman Wells, superintendent of the building and he told us to leave it at the shop, he would recognize them in our shop as delivered, and O. K. Estimate number 3 that contained those items. Q. And about the \$2,250 worth of valves on Estimate number 6, how about them? A. They arrived just about the,—around the first of the year, and we did not have opportunity to include them in Estimate number 3 or 4, and consequently they were included as being ready for delivery. They would have been here earlier, had the building been ready, but we were able to get a little delay on that particular item, but they came in, expecting [705] to use them at the building. Q. How about the present time, are they in your warehouse? A. They are at the warehouse. Q. What was the reason for placing them in the warehouse? A. The principal reason is they were quite a valuable item and represented no small amount, took a small amount of storage, and at the time they came, they came shortly after the bank had failed, and we put them in the warehouse.

When we commenced our preparations under the contract, we got out orders for all the materials expected to be used, as far as we could anticipate.

(Testimony of M. O. Herber.)

Some of the material has never been received as we were able to cancel orders for goods that had not been actually sent. The large item that we were able to stop, consisting of radiation material, amounted to some \$7,000. Q. Now, have you made an estimate of what it would have cost, what material would have been required in addition to what you have covered by your list of claims now, to complete your contract? A. Yes. Q. And how much would that be?

Mr. METZGER.—I object to that as immaterial, irrelevant and incompetent, and as not a proper lien charge.

The COURT.—You are trying to deduct,—

Mr. STILES.—I am not going to ask anything for it, but I am going to ask something at the end of this matter, for our reasonable profit on the contract, and to do that, I have to show what would have been required.

Mr. OAKLEY.—I want to make objection on the ground that it is an attempt to make a lien on an item that represents damages for the breach of this contract, which is not recoverable in this action.

The COURT.—I have some doubt about it, but I do not want to prejudge it. Objection overruled for the present.

Mr. OAKLEY.—Exception.

The COURT.—I will hear you in argument in that, along with the other reserved points."



(Testimony of M. O. Herber.)

WITNESS.—The balance of material necessary to finish the job would cost \$16,691.64. [706] I arrived at these figures by scanning through all of our Estimate Books and material that was delivered on the job and the material we were able to cancel already ordered, and took off all those items; and that is what the total stands at. Labor necessary to finish the job would have cost \$11,096.70 according to the original labor estimates. The amounts claimed under the lien and the amounts which it would take to complete the job, including labor and material, total \$81,970.23, which would have been the cost of the job completed to Olson & Company. The contract was for \$90,000 and we would have realized \$8,029.77, which would have been our profit on the job.

Mr. STILES.—We are conceding by our complaints herein, that the Crane Company are entitled to a portion of this, and we only ask for the balance left after they get theirs.

The COURT.—Do you mean the balance of the sale price of the material?

Mr. STILES.—I am simply showing we are not denying Crane Company's claim.

Q. Now, something was said to-day about some of this stuff of Crane Company's having been purchased by catalog or being purchasable by catalog. What have you to say about that as to this particular lot of items?

A. The items particularly,—as far as the fact of a plate number making a fixture standard, it

(Testimony of M. O. Herber.)

is not our understanding whatsoever. There are any number of plate numbers and fixture numbers in the Crane Company catalogue, that are not kept in stock and manufactured. In fact there are some of the plate numbers that require particular plans giving details and so forth, before they can be built, even though in spite of the fact that there are plate numbers given and pictures in the catalogue.

Q. In other words, although this catalogue that was shown here this morning, has a large number of plates in it, are those [707] known to the trade as being kept in stock?

A. No, they are not kept in stock.

Q. Are they designated in any way in the catalogue, so that you can tell what are kept in stock and what are not?

A. Yes, sir, in certain cases they are, and often they are not. You have to get that information from the wholesale house.

Q. Now, what about these fixtures that were specified for this building as regards the catalogue?

A. The conversation was to expedite the placing of the order and getting the details fixed up, for the bowls particularly had to go through the kiln and be manufactured after the order was sent east, and furthermore in regard to the Hurlbut fittings that comes with these, it was necessary to work out several details, because there are 24 different patterns of Hurlbut fittings. In other words, there are 12, numbered from 1 to 12 right and 1 to 12 left, making

(Testimony of M. O. Herber.)

24 distinct Hurlbut fittings, so we had to have a number of plans as it was distinctly understood we could not return them or if there was any mistake made, there would be no chance of getting credit in case they were not used and a substitution was made.

The COURT.—No chance to get a credit, applies only to the fittings, is that right?

WITNESS.—Or to have an exchange, your Honor.

Q. Now, with these things on your hands,—

A. I beg pardon?

Q. With these basins, for instance, on your hands, what would they be worth to you in the trade?

A. I would not estimate them at over 25 per cent at the outside.

Q. How long would it take to dispose of them?

A. The large number of lavatories for that job, we would be considered very fortunate, and we would have to use extraordinary [708] diligence to dispose of them in ten years time.

The COURT.—Now, when you speak of basins and bowls and lavatories, are you all the time talking about the same thing? A. Yes.

Q. Now, what about these slop sinks?

A. The slop sinks are special on three counts; size, particularly, 18x22, is not the stock size that is carried in stock by the wholesale houses here. Each fixture had to be supplied with a wood rim-guard. That is never called for in standard work or usual customary work, and the third count is the

(Testimony of M. O. Herber.)

fact that the waste outlet goes through the wall instead of through the floor, making them particularly special.

Q. These shown in the book went through the floor?

A. The urinals are special because of the waste outlet particularly, that being what is known as a Dunham trap instead of a cast iron trap, usually used, and then the fact of the quantity, particularly in our establishment, makes them extremely special.

Q. What is that word, Dunham?

A. They use steel or wrought iron for the waste pipe instead of a cast iron one. Only large buildings like the Tacoma and the Scandinavian-American Bank Building, use that kind of construction.

Q. Have you tried to stop any of this material from Crane Company?

A. Yes, sir, we tried to make blanket cancellation of everything that was not here, and we were successful in being able to cancel the radiation and covering particularly, but the balance of the items we were not. They had already been manufactured. Although the lavatories should have been shipped some time previous, but had been delayed, we had been able to get delays on account of the construction of the building, for some time, but we did not expect the delay to take that long. The basins should have been here several months previous if they had taken their usual course. [709]

Q. Here is a list of items I will hand you and ask

(Testimony of M. O. Herber.)

you if that is a summary that gives the claim of Ben Olson Company as it is presented here?

A. Yes, it is.

Mr. STILES.—We offer this in evidence.

The COURT.—It will be admitted as a summary.

Said summary of the Olson claim was received in evidence and marked Exhibit 269, as follows:

**Defendant's Exhibit No. 269.**

(Stiles.)

RECAPITULATION OF CLAIM OF BEN OLSON COMPANY.

Estimate No. 1, Materials delivered ..	\$ 8,378.03
"    No. 2,            "    "    ....	7,764.83
"    No. 3,            "    "    ....	7,814.40
"    No. 4,            "    "    ...	665.81
"    No. 5,            "    "    ...	6,132.66
"    No. 6,            "    "    ...	12,910.76
Materials in Shop (Ben Olson Co.,) .....	5,875.60
"    "    "    (F. H. Godfrey) ....	2,250.00
Estimate No. I, Labor .....	1,163.00
"    No. 2,    "    .....	208.00
"    No. 3,    "    .....	779.00
"    No. 4,    "    .....	1,129.80

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\$54,081.89

By Payment a/c Estimate No.1, \$6,405.77

No. 2, 6,019.79

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\$12,425.56

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Balance due for Materials and Labor .. \$ 41,656.33



(Testimony of M. O. Herber.)

Furnished Labor and Materials .....	\$54,081.89
Estimated to Finish Materials .....	16,691.64
“ “ Labor .....	11,196.70

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Total Cost .....	\$ 81,970.23
Profit on Contract .....	8,029.77

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Contract Price .....	\$ 90,000.00
Due Plaintiff, Material and Labor ....	\$ 41,656.33
Profit .....	8,029.77

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\$ 49,686.10

#### Cross-examination.

(By Mr. OAKLEY.)

Q. Can you tell us the difference between the value of the material actually delivered to the building at the present time, and the amount which you have paid, which is 75% [710] of the invoices? A. The material actually at the building at the present time is \$24,633.07. We have been paid \$12,000 and odd dollars, I have not got the exact figures. Q. How much of that is covered by the lien claim of Crane Company, how much of those items is covered by that? A. Practically \$20,000. We were to install this material but the \$24,000 does not include the cost of installation, except labor already furnished. Our labor item is not covered in the \$24,000; the labor is on top of that. If I took the labor it would be \$27,000.

(Testimony of M. O. Herber.)

(By Mr. METZGER.)

To complete the purchase of material for the job besides Estimates 1, 2, 3, 4, 5 and 6, would take \$16,691.64, and the additional labor would cost \$11,196.70. Of the amount for material \$7,984.11 is included in straight radiation material. That radiation material is what we cancelled. Of the additional labor item of \$11,196.70, \$5,857 would have gone to the cost of radiation installation. We placed our order with Crane Company in writing. I have here a quotation furnished by Crane Company for this job. The order follows the quotation in part; there were some changes on that so that our final order was modified. That is a copy of the order for the fixtures.

Mr. METZGER.—I would like to have this marked for identification, 270.

WITNESS.—That is the copy of the order which I placed. The first item, 86 closets complete, is the same as the closets itemized on Estimate 5, Exhibit 262, and the second item on identification 270 is the first item on our Estimate No. 6, 32 urinals. B-4174, the third item on identification 270, lavatories, corresponds with the second item on Exhibit 263. The fourth item on 270, 238 lavatories, corresponds with the third item on Exhibit 264 and the last item on 270 corresponds with the fourth item on Exhibit 263, 16 slop sinks.

Q. Now on this order you have designated each item simply by a catalogue number and size, have you not? [711]

(Testimony of M. O. Herber.)

A. Yes, this was at all times,—in other words, this was an abbreviated form for our convenience. The complete detailed descriptions would refer back to the specification again, but this is a true copy of the order which we placed and under which the items in Estimate 5 and 6, Exhibit 262 and 263 were furnished. The urinals were special by reason of the outlet connections and the quantity. The quantity was larger than Ben Olson Company carried in its stock here or ever carried. I would say that it was larger than Crane Company carried. Crane Company have a great many branch houses, I do not know how many. I do not pretend to be familiar with stocks carried by all the branch houses and main warehouses. The urinals are special because the outlet is for a Durham fixture, it goes down straight, but the outlet for the slop sink goes through the wall. Q. Now what difference in the connection was there between an ordinary job and a Dunham job? A. An ordinary job consists of a cast iron pipe with crooked joints and leaded joints. The Dunham job has screw connections with recessed fittings. Those fittings came with the urinals according to this order which we placed. The slop sinks were special for three reasons, and they were furnished in accordance with the specifications. Q. Now, I will ask you if the specifications did not say that they were to be standard, with outlet through the wall, calling attention to the specification here, Exhibit 266. I will ask you if this is not exactly what the specifications say about that

(Testimony of M. O. Herber.)

(handing witness paper). A. Standard. Q. Is that what the specifications call for, standard without outlet to walls? A. Yes, but "standard" interpretation here is that there are three sizes all under that one number, and standard that the outlet to the wall might be used in some of the other sets in here. It might be standard as far as this interpretation is concerned, but it is not a standard fixture, as we use that word here in town. Q. Then your definition of standard or special is merely whether or not Ben Olson Company in this city has or carries that particular item, is that right? A. Not particularly Ben Olson Company, but the plumbing [712] ordinances, or the usual custom in town. Q. It is not any question whether or not it is standard with the jobber from whom you purchase it? A. It is not standard here in town with the jobbers. We know all the jobbers. Q. You do not mean to say that Crane Company never made or furnished slop sinks of this type or pattern, do you? A. No, I do not say that. Q. You do not mean to say that this was an unusual type of slop sink for Crane Company to furnish? A. It is here in town, yes. Q. To be furnished here in town, but not for them to make and furnish to the trade generally? A. My experience would only be between here and Seattle, there I know it is special, but in the country generally there is a possibility. Q. You said that one of the reasons that this was a special, because in this case the outlet was to the wall instead of to the floor,

(Testimony of M. O. Herber.)

was that right? A. Yes. Q. And that this plate here showed an outlet to the floor instead of to the wall? A. No, I did not make that statement. If I did I do not remember the plate number particularly. I would have to refer to the plate number. Q. Let me ask you this: these slop sinks are all provided with a trap beneath them, are they not? A. Yes. Q. That is a trap in that sense simply an elbow in the pipe to prevent the sewer gas from backing up? A. This is a fixture that goes to the wall instead of to the floor. Q. I call your attention to plate B-4984 on page 97, and ask you if that plate does not show the outlet going to the wall instead of to the floor? A. Yes. Q. Then, in the ordinary course of trade as a plumber looking at this catalogue, you would say that an outlet to the wall of this building there, was standard according to the Crane Company catalogue? A. It is special with us. Q. I asked you if it would not be standard in accordance with the catalogue. I am not asking you now as to your experience? A. Standard means being kept in stock. I would still insist it was special, as far as that plate number shows, and as I said, a while ago, there are other plate numbers there that are still more special than that. [713] Q. What was the size of this slop sink? A. 18x22, I think. Q. I will ask you if this catalogue does not expressly list that size slop sink? A. Yes, it does. Q. Do you know how large a stock of these slop sinks Crane Company carry? A. They do not carry any with the wall



(Testimony of M. O. Herber.)

outlet. Q. They do not carry any with the wall outlet? A. No, sir. Q. You mean here in Tacoma? A. Here in Tacoma, sure. Q. Your statement only was that they do not carry it here; in other words, when you say that they do not carry anything, you refer always to the local branch here in Tacoma? A. Yes. Q. You have no reference to their factory or their main warehouse elsewhere? A. No. Q. Now, you ordered some pipe from them, did you not? A. Yes. Q. That pipe was for most part, a standard size? A. Standard size, yes, with the exception— Q. Was that bought here, or was that shipped in here from somewhere else? A. Shipped in. Q. Was not carried here, was it? A. No. Q. Had to be shipped in? A. Yes. Q. Now, do you know when you placed the order,—I will ask you this: did you place this order on the day it bears date, referring to identification 270? A. Yes. Q. Now, you said something about some of this material having to go through the kiln; what material were you referring to? A. The closet bowls. Q. That was the only vitreous ware in the order,—the rest of it was all enamelled iron? A. Yes, I beg your pardon, except urinals. Q. Those had to go through the kiln too?

The COURT.—What was the reason for that? A. The lavatories and the slop sinks are made of cast iron enamelled, and the closet bowls and urinals and stools are solid porcelain, throughout. Q. I do not understand why they had to go through the kiln after the order, weren't they in stock any-

(Testimony of M. O. Herber.)

where? A. No, the closets particularly. No, I did not make that statement about the urinals, your honor, but the wash-bowls being a wall outlet made it a special fixture and not kept in stock even by the manufacturers. Q. Now, this part of your order, B-1726, refers to the plate shown on this catalogue, page 374, in the upper right hand corner, doesn't it? [714] A. Yes, sir.

Mr. METZGER.—We will offer at this time in evidence, the order by which they ordered the stuff.

The COURT.—It will be admitted.

Said order was received in evidence and marked Exhibit 270 (Langhorne), as follows:

**Defendant's Exhibit No. 270.**

**(Langhorne.)**

From Crane Company.

Date March 1st, 1920.

Priced by H. & P.

To BEN OLSON COMPANY.

Copy of order for Plumbing fixture for Scandinavian-American Bank.

86—B 2716. Wall Closets with #18-5

Whalebonite seats @ .....71.15 each

33—B 4174—18" Regular selection Porcelain urinals with outlet connection and Cram air controlled flush valve @ .....63.19

24—B 440—20x24" Enamel Lavatories

with trimmings @ .....37.95

(Testimony of M. O. Herber.)

238—B 487—20-24" Enamel Lavatories

with trimmings @ .....27.10

16—B 4984—18x22" Enamel Slop sinks

with bibbs and wood guards @ .....38.50

Q. You testified that there was some \$8,000 profit which you expected to make, which you would have made had this contract been completed? That includes the profits which would have been made on the installation of the radiation and heating plant?

A. Yes, sir. After we had furnished the balance of the material that was cancelled and what was taken back and not expended labor, that would leave a difference besides these items already charged.

Q. Now, all the fixtures which you cover by your estimates 5 and 6, except \$262, are taken and ordered in accordance with these general specifications here, are they not?

A. You mean estimates 2 and 3? Q. No, estimates 5 and 6.

A. O, yes, 5 and 6, according to the specifications. That was part of the specification,—part of the [715] order was to be according to the specification.

Q. What I am getting at is this: Those fixtures were ordered strictly in accordance with the specifications? A. Yes, sir.

Q. Taken from the specification? A. Yes. Q. In accordance with the provision in the specifications as follows: "Following fixtures are taken from Crane Company's catalogue and circular 531-D?

A. Yes. Q. Now about these Hurlbut fittings which you have been talking about. You say there are 24 different styles of them.

A. 24 different kinds of Hurlbut fittings.

(Testimony of M. O. Herber.)

Q. Manufactured of that particular kind to fit the various requirements of the different jobs upon which they may be required or used? A. All of the fittings may be required on one job; one job might take only half of the fittings. Of course that would be unusual. Q. The reason for that, in the installation of the closets, its location to the rest of the plumbing in the wall, may require either a right or a left fitting? A. Correct. Q. And the plumbing and supply houses want to know the various requirements in order to provide the proper fittings, is that right? A. Yes. Q. And for that reason they have 24 kinds of this particular fitting? A. Yes, sir. Q. Which they are providing right along to the trade wherever this particular class of fittings, the Hurlbut fittings, are specified? A. And made up for the order.

(By Mr. BONNEVILLE.)

Q. But outside of the Hurlbut fittings, couldn't you order directly from the catalogue and get them? (Meaning items of Exhibit 257.) A. Well, the specifications rule supreme above this particular order; as in the lavatory item, it gives the plate number, but does not mention the securo waste, which made it a particular fitting. You could not specify this plate number for a securo waste and then have a fair chance at any time, of getting it, but it would require further communication and so forth to get it all fixed up. Q. But they carry all these things in stock? A. They [716] do not. Q. What don't they carry? A. They don't carry the

(Testimony of M. O. Herber.)

closets. They carry a limited amount of urinals. They would not carry two per cent of these particular lavatories. They would not carry any of the slop sinks. Q. You mean here in Tacoma? A. Yes. Q. Now, there has been considerable figuring as to a certain amount of material furnished and amount of labor done. The Ben Olson contract was a contract, wasn't it, to furnish plumbing and heating materials and install that same material into the building, wasn't it? A. Yes. Q. Complete? A. Yes. Q. That was for your contract price, you were to do both of those things? A. Yes. Q. And your profit after you have figured it on that would be the profit you would have made had you completed the job, wouldn't it? A. Yes. Q. Both as to labor and material? A. Yes. Q. So that really your contract was for a completed job of installation in the building, wasn't it? A. Yes. (By the COURT.)

Q. Has your company made any effort or inquiry of the wholesalers or jobbers to see how much they could realize out of this stuff which you have on hand? A. We have, your Honor, and very, very unsatisfactory results; that is on the pumps, that we hold that shows some \$1500 the manufacturers themselves only allow us \$300.00. Q. 20 per cent? A. 20 per cent is what the manufacturers would allow on the pumps. Q. Anything else? A. The lavatories are one of the largest items, and we cannot figure we can realize beyond 20 to 25 per cent on that item. Q. Have you made any inquiries?



(Testimony of M. O. Herber.)

A. Yes. Q. Any correspondence? A. We have corresponded in the immediate vicinity and we have met with no better success than we did with some shipments we held for a number of years,—they simply wore out, shop worn in our shop, and that was intended originally for the Perkins Building, and we held them over for ten years.

WITNESS.—That would be possibly the best reason, but the real situation is they are so extremely special that there is practically [717] no disposal of them.

Redirect Examination.

(By Mr. STILES.)

Q. In other words, you will have to find another building something like this one before there will be a demand for this material? A. Yes. Q. I understand you to say there were about \$24,000 worth of the material in the building now? A. Yes. Q. Of the material that is in the building now, how much of it, if any, was furnished by Crane Company for the purpose of this building? A. In the first place I used \$20,000 as a rough estimate, as a tentative glance over the proposition. I may be several thousand dollars wrong. I did not tabulate it. Q. Now, is there any of that material in the building that is there now that was put in by you out of your shop or you had originally purchased from Crane Company? A. No. Q. None at all? Now in your estimate number 2,— A. I beg your pardon? You are asking if we took stock we held in our own stock and put it over in the

(Testimony of M. O. Herber.)

building, that I originally bought from Crane Company? A. Yes. A. There is a possibility there might be a few items that had been gotten some time before, but all of the items we did furnish out of our own stock, we took back from the building and gave them credit for, so that that will be back in our stock. But all the stuff that is at the building, that Crane Co. are claiming, we left that at the building. Q. Were you required to do that? A. Yes. Q. Now, I understand you to say that the \$20,000 of it there that Crane Company have not been paid for? A. What is the question? Q. Of that material, I understand you to say that there is \$20,000 of it there, that Crane Company have not been paid for? A. Well, there is,—they are claiming, but whether it applies to that particular amount, I doubt, because the \$20,000 lien claim takes in other items besides that. Q. Their lien claim, as I understand it, takes in these items they have in storage here? A. Yes. Q. And their [718] claim was made here, as you are aware, is something over \$20,000? A. Yes. Q. And their claim therefore includes that in storage as well as whatever there is in the Building? A. It includes closets particularly that are not included in the \$24,000.

Mr. STILES.—I have finished my testimony with the exception of what testimony Crane Company may want to put in, that I may want to use in connection with this case.

The COURT.—It will be so considered and understood.

Mr. STILES.—I want to put in evidence the minutes of the meeting of the Scandinavian-American Bank of the date of November 25, 1919, page 403 of the minute-book.

Mr. OAKLEY.—The whole book is in, and that is in special.

The COURT.—Well, page 403 of the minute-book will be your special exhibit 271, and the whole minute-book is exhibit 183?

Mr. STILES.—I did not know the whole minute-book was in, and I would have objected very much to the whole minute-book. I only want page 403.

Said page 403, minute-book Bank, was received in evidence and marked Exhibit 271 (Stiles), as follows:

**Defendant's Exhibit No. 271.**

**(Stiles.)**

MINUTES OF REGULAR MEETING OF THE  
BOARD OF DIRECTORS

of the

SCANDINAVIAN-AMERICAN BANK OF TA-  
COMA

Held in Directors' Room of the Bank on the 25th  
day of November, 1919.

The regular weekly meeting of the Board of Directors of the bank was held in the Directors' room of the bank on the 25th day of November, 1919, at the hour of 3:00 P. M.

The following Directors were present:

J. E. Chilberg	O. S. Larson
Gustaf Lindberg	Charles Drury
George G. Williamson	

J. E. Chilberg, president of the bank, presided at the meeting.

On motion duly made, seconded and carried, the Scandinavian-American Building Company was voted a temporary credit of \$15,000.00, to be secured by deed to the lot to that certain property known as the Drury property adjoining the building of the Scandinavian-American Bank on the North, and more particularly described as follows, to wit: [719]

Lot 10, in Block 1003, as the same is known, shown and designated upon a certain plat filed for record with the auditor of Pierce County, Washington, on February 3, 1875, entitled "Map of New Tacoma, W. T."

\* \* \* \* \*

No further business coming before the Board, on motion, the meeting adjourned.

\_\_\_\_\_,  
President.

Attest: \_\_\_\_\_,  
Secretary.

Mr. STILES.—Also in connection with this case I wish to call upon counsel for the conveyance from Drury, or whoever it was, to the bank Lot 10, and also for the Bank's conveyance to the Building Company of Lots 11 and 12, which I wish to

(Testimony of M. O. Herber.)

put in evidence, and in addition to that, in connection with our case, we want to show the deposition of Charles Drury, page 3, and also the deposition of Mr. Taylor, taken by the McClintic-Marshall Company, and letters exhibits 7, 8, 9, 10, 11, 12 and 14 of the exhibits in connection with the testimony of Taylor.

FROM CLAIM OF CRANE COMPANY.

**Testimony of Frank Downie, for Crane Company.**

FRANK DOWNIE, witness for Crane Company, duly sworn, testified:

(By Mr. FULTON.)

WITNESS.—I am credit manager of the Seattle and Tacoma branches of the Crane Company; have been with that company over twelve years. Our Company had dealings with Ben Olson Company in reference to the furnishing of plumbing materials and supplies for the Scandinavian-American Building. Witness produces the original claim of lien of Crane Company admitted in evidence as Exhibit 272, as follows: [720]



**Defendant's Exhibit No. 272.**

**(Fulton.)**

State of Washington,  
County of King,—ss.

CRANE COMPANY, a Corporation,  
Claimant,

vs.

SCANDINAVIAN-AMERICAN BUILDING  
COMPANY, a Corporation, and BEN OL-  
SON COMPANY, a Corporation.

**NOTICE OF CLAIM OF LIEN FOR MATE-  
RIALS FURNISHED.**

NOTICE IS HEREBY GIVEN that on the 29th day of June, 1920, the undersigned, Crane Company, a corporation, was employed by and at the request of Scandinavian-American Building Company, a corporation, through its duly authorized agent, Ben Olson Company, a corporation, commenced to furnish materials to be used and which were used upon the following described property in Pierce County, Washington, to wit:

Lots ten, eleven and twelve in Block one thousand and three (1003) as the same are shown and designated upon a certain plat entitled "Map of New Tacoma, W. T.," filed for record in the office of the Auditor for Pierce County, Washington Territory, Feb. 3, 1875.

in the construction of that certain building or structure situated thereon, an office building.

That Scandinavian-American Building Company,

a corporation is the owner and reputed owner of the said land and the said office building or structure situated thereon and that Ben Olson Company, a corporation, at all the times herein mentioned was the agent of the said owner for the construction of said building or structure, and for the ordering of materials therefor.

That all of said land hereinabove described is necessary for the convenient use and occupation of the said office building or structure.

That the undersigned ceased to furnish said materials on the 15th day of January, 1921, and ninety (90) days have not elapsed since said last named date; that the value of the said materials was and is twenty thousand four hundred sixteen and 80/100th dollars (\$20,416.80); that there is hereto attached, marked Exhibit "A" and made a part thereof an itemized statement of said materials, which consist of plumbing supplies.

That the claimant undersigned claims a lien upon the said building or structure, said office building above described and the land which the same is situated for the sum of twenty thousand four hundred sixteen and 80/100ths dollars (\$20,416.80).

That claimant has in all respects duly and regularly complied with all the laws of the state of Washington, entitling it to file and enforce this, its lien for said materials.

CRANE COMPANY, a Corporation,

By L. B. PEEPLES,

Mgr.

Verified Apr. 9, 1921. Recorded Apr. 11, 1921.

Quantity	Size	Description	Price	Extension	Total
		EXHIBIT "A" 1.	Tacoma, Wash., 6-11-20.		
		BEN OLSON COMPANY,			
		City.			
18'	7"4"	Nat FW Galv Pipe	118.50		22.02
		EXHIBIT "A" 2.	6.92	c ft	85.91
		Blk. Genuine W. I. Pipe	Tacoma, Wash., 7/1/20.		
241-5	1½"	ditto	17.58		323.97
342-10	1¼"	"	21.02		283.77
350-0	1½	"	47.00		359.08
764-0	2½	"	74.11		49.49
64-1	3½	"	118.95		149.67
125-10	5	"	154.24		207.07
134-3	6	"	208.16		532.54
255-10	8	"	10.59		219.94
076-10	¾	"	20.17		295.10
463-1	1¼	"	25.31		841.68
325-6	1½	"	54.41		643.49
182-8	2½	"	85.56		126.77
148-2	3½	"	178.58		1372.53
768-7	6	"			
					5489.01
		EXHIBIT "A" 3.	Tacoma, Wash., 8/5/20.		
1	4"	#1028 Galv. Drg. Y	6.75		5.40
		20			
		EXHIBIT "A" 4.	Tacoma, Wash., 9/3/20.		
			c		
69'7"	¾"	Blk Genuine WI Pipe	8.80	ft net	243.72
88-2	1	ditto	13.00	do	336.46
08-5	2	"	30.45	do	367.96
32-7	3	"	61.96	do	515.87
02-11	4"	"	87.58	do	177.72
56-11	10"	"	226.48	do	128.91
87-6	½"	Galv Genuine W I Pipe	8.62	do	223.04
40-8	1	ditto	15.65	do	209.81
06-11	3	"	71.65	do	2011.16
					4730.58
		EXHIBIT "A" 5.	Tacoma, Wash., 9/30/20.		
1	3 x 1¼	Galv. Mall. Tee	7.60	7.60	
1	3 x 2	ditto	7.60	7.60	
		60		15.20	6.08
2	3 x 2	Face Bushings	.70	1.40	1.33
					7.41

Quantity	Size	Description	Price	Extension	Total
EXHIBIT "A" 6.			Tacoma, Wash., 10/15/20.		
1	6	#1020 Galv. Dr. Fitting	16.50	16.50	
39	6 x 4	#1021 do	18.50	721.50	
6	6	#1028 "	18.50	111.00	
2	6	#1001 "	13.15	26.30	
1	6	#1003 "	11.00	11.00	

[722]

EXHIBIT "A" 6 Brought Forward.					
8	4 x 1½	#1029 Galv. Dr. Fitting	7.40	59.20	
2	4 x 3	#1029 ditto	7.40	14.80	
10	4 x 4	#1028 "	6.75	67.50	
4	4 x 4	#1020 "	6.15	24.60	
87	3 x 1½	#1029 "	6.10	443.70	
4	3	#1028 "	4.65	18.60	
1	3	#1001 "	3.10	3.10	
3	3	#1003 "	2.55	7.65	
39	2½ x 1½	#1029 "	4.00	156.00	
3	2½	#1028 "	3.70	11.10	
6	2	#1024 "	2.30	13.80	
18	2	#1020 Galv. Dr. Fitting	1.50	27.00	
35	2	#1059 do	3.50	122.50	
20	2	#1001 "	1.15	23.00	
39	2	#1003 "	1.00	30.00	
120	1½	#1024 "	1.50	180.00	
100	1½	#1020 "	1.00	100.00	
10	1½	#1057 "	1.00	100.00	
50	1½	#1058 "	.70	42.00	
250	1½	#1003 "	.67	167.50	
50	1½	#1001 "	.72	36.00	
38—5%				2434.35	1433.

*McClintic-Marshall Company et al.* 939

Quantity	Size	Description	Price	Extension	Total
86		EXHIBIT "A" 7.			
		Crane Expedio Heavy Vitro-ware Wall closets wf 1½" spud and hooded rear inlet, extended flushing lip and S/A			
86		B-2341 Concealed Rgh Brass Air controlled flush valve, with N. P. Brass handle, complete with conn. from valve to bowl wall to be ("") think			
86		B-3438 (18-5) Whalebonite Mahogany finish serpentine seat open front & back, N. P. concealed hinge with check hinge — parts for Expedio WH bowls wf extended lip.			
86		Galv. Crane Hurlbut Drainage Fittings as follows:			
		27—Y-641—4 x 4 #1 R. Hand Galv.			
		14 ditto #3			
		2 " #5			
		2 " #7			
		18 Y—643 4' x 4" #1 Left hand Galv.			
		17 ditto #3			
		1 " #5			
		1 " #7			
		2 " #9			
		2 " #11			
723]		Exhibit "A" 7 (Continued)			
258	5/8"	W. I. Galv. Studs wf one brass Jexagon but and one Galv. Iron Nut.			
86	4"	Electro Galv. W. I. Nipples			
86		Graphite treated Asbestos Gaskets			
258		R. B. Washers for 5/8" Studs			
258		N. P. Brass cap nuts			
258		N. P. Brass Washers	71.15	net ea.	\$6118.90



Quantity	Size	Description	Price	Extension	Total
EXHIBIT "A" 8.					
6	4"	Galv. Nipples 30	1.35	Tacoma, Wash., 1/6/21. 8.10	5.67
2	2"	#1005 Galv. Drg. Fittings	1.00	2.00	1.60
					7.27
EXHIBIT "A" 9.					
3	4"	#1003 Galv. Drg 45 Deg. Ells	4.00	Tacoma, Washington, 1/6/21. 12.00	
5	3"	#1003 ditto	2.55	12.75	
					19.80
24	1/12	Galv Mall Locknuts	.52	12.48	5.34
					25.14
EXHIBIT "A" 10					
1 Pc	6"	Nat FW Galv. Pipe 2 3/4"	266.00	Tacoma, Wash., 1/7/21. .61	
2	6"	Threads	1.05	Net ea/ 2.10	
					2.71
EXHIBIT "A" 11.					
3	6"	#1003 Galv. Dr. Fittings	11.00	Tacoma, Wash., 1/11/21. 33.00	
1	6"	#1001 do	13.15	13.15	
					36.92
EXHIBIT "A" 12.					
1	6 x 4	Blk Bushing	1.25	Tacoma, Wash., 1/12/21. 1.00	
					1.00
EXHIBIT "A" 13					
2	6"	Threads (on own pipe)	1.05	Tacoma, Wash., 1/13/21. net each 2.10	
EXHIBIT "A" 14.					
3 Pcs	6"	Galv. Pipe 0' 3 1/2" T. B. E.	227.00	Tacoma, Wash., 1/14/21. 2.00	
6	6"	Threads	1.05	net ea 6.30	8.30
[724]					
EXHIBIT "A" 15.					
4	6 x 4"	#1021 Galv. Dr. Tees	18.50	Tacoma, Wash., 1/14/21. 74.50	48.10
					35
EXHIBIT "A" 16.					
2	6"	#1000 Galv. Dr. Elbows	11.00	Tacoma, Wash., 1/15/21. 22.00	
2	6"	#1003 " " Deg. Elbows	11.00	22.00	28.60
EXHIBIT "A" 17.					
2411-11	4"	Galv. Genuine W. I. Pipe	101.39	Tacoma, Wash., 11/17/20. c ft \$2445.45	
EXHIBIT "A" 18.					
1	6 x 3	Blk Busjing		Tacoma, Wash., 1/5/21. 1.25	1.19
					5%
EXHIBIT "A" 19.					
1 Pc	6"	Galv. Pipe 0' 3 1/2" TBE	266.00	Tacoma, Wash., 1/5/21. .77	
					1.05 net ea 2.10
					2.87

(Testimony of Frank Downie.)

Leave granted counsel for Crane Company to amend Exhibit 272 by alleging that the date of the first delivery was June 29th, 1920, instead of June 11th as alleged.

WITNESS.—I am familiar with the property described in Exhibit “A”—No. 2, attached to said lien for \$5,489.01. This particular shipment was a carload of pipe unloaded and checked out by our men, by one of Ben Olson’s men and Mr. Glenn of the Scandinavian-American Building Company, and was delivered to the Scandinavian-American Building Company’s building. Some of it has already been installed and some of it is over in the building now. The prices set opposite the various items delivered and constituting the total of \$5,489.01 are the reasonable and market prices of that property. Exhibit “A”—No. 3 attached to the lien, calling for an item of \$5.40, was delivered to the building on August 5, 1920, and that amount is the reasonable value of the property delivered. Exhibit “A”—No. 4 attached to the lien is an item of \$4,730.58 and is another shipment of pipe unloaded in the same way as the first one checked out by us, by Ben Olson Company and also by Mr. Glenn of the Scandinavian-American Building Company and delivered to the building. The value of the various items set out in the exhibit is their reasonable market value. Exhibit No. 5 attached to said lien is an item of \$7.45, which is the reasonable value of the property which was ordered by Ben Olson Company for the Scandinavian-American Building Company and

(Testimony of Frank Downie.)

taken by Ben Olson Company. Exhibit "A"—No. 6 is an item of \$1,433.83 covering property which was ordered by Ben Olson Company and delivered to the Scandinavian-American Building, consisting of drainage fittings, and the value of the items as set forth in said exhibit is the very reasonable market value. Exhibit "A"—No. 7 attached to said lien notice calls for a total of \$6,118.90, consisting of 86 toilet outfits. The value assigned is the reasonable market value of said complete outfits. These outfits are divided into four parts: the bowl, the valve, the seat, and the fitting or pipe which connects with the sewer connection. [726] One complete outfit was delivered at the building as a sample. Q. What have you to say as to the delivery of the fittings? A. On this particular shipment of 86 outfits, Ben Olson took away, not only this one complete outfit as a sample, but they also took away the 86 fittings, what we call Hurlbut fittings, which is the connecting part of the outfit and necessary to put through the wall of the building while the job is being roughed in, before the finishing is begun; it is necessary to fit this fitting in there. Then later the remainder of the outfit, the bowl, tank and seat is fitted on that. Those 86 fittings were taken away from our building on January 5, at the request of Ben Olson Company. He was particularly notified at that time that the taking away of that fitting constituted the delivery of the entire material, because that outfit was no use to us without that outfit. Q. And now the 85 bowls and

(Testimony of Frank Downie.)

85 vales ad 85 seats are still in the warehouse?

A. Yes, sir. Q. Do you know whether or not these are made in special sizes? A. They are made

special at the factory at our request. Q. They were made specially for that building? A. Yes, sir.

Q. Now, having been made special, Mr. Downie, how is their value affected by reason of that? A.

The value at the present time is speculative, as long as we hold them. In fact they are useless to

us until some other jobs come along where a particular building is going up and some particular

architect, specifies that particular outfit; unless they do that these things are on our hands and

useless. Q. What have you to say as to these fittings and bowls being of a high class, expensive

nature? A. They are all of the very best material, high class. Q. And are they carried in stock? A.

No, sir, we never carry them in stock. Q. What can these bowls and seats be used for—without

the fittings, the Hurlbut fittings? A. How is that? Q. Can these bowls and seats be used without the

fittings, the Hurlbut fittings? A. No, sir. [727]

Cross-examination.

(By Mr. OAKLEY.)

This order was placed by Ben Olson Company; by written orders. Order for the pipe was placed February 26, 1920, it was all delivered at the building and is there now. The other big item called combined toilet lavatories, was ordered February 27, 1920. These orders constitute the contract between us.

Order produced by witness, received in evidence and marked Exhibit 273 (Receiver), as follows:

**Defendant's Exhibit No. 273.**

**(Receiver.)**

Tacoma, Washington, February 27, 1920.

Crane Company,

City.

Dear Sirs:

We herewith place order for the fixtures for the Scandinavian-American Bank Building according to Plans and Specifications by Frederick Webber, Architect:

86 Wall Outlet Closets complete with valves @.....	71.15
33 Urinals 18" Complete with valves and outlet connection @.....	63.19
24 Lavatories for Toilet Room with trimmings @.....	37.95
283 Lavatories for Offices with trimmings @	27.10
16 18x22 Enameled Slop Sinks with bibbs and wood guards @.....	38.50

Kindly confirm this order giving us plate numbers. As our contract calls for completion by December 10th, it is necessary that we have roughing in measurements for all these fixtures in the very near future.

Yours respectfully,

BEN OLSON COMPANY,

By M. O. HERBER.



(Testimony of Frank Downie.)

WITNESS.—It specifies fixtures according to plans and specifications of Frederick Webber; by whom furnished, I do not know.

We got sufficient information about the 33 urinals etc., also for the 24 lavatories with trimmings, including instructions according to specifications. Mr. Prescott, the assistant manager, got that. The prices mentioned, namely closets at [728] \$71.15 a piece and so on down, is the price we quoted for these articles; that was below the market price.

Q. Now, you mean to say that upon the state of that order it was necessary to have these items specially built? A. Absolutely. Q. In your factories? A. Yes. We never carry it in stock; we carry stock that is salable. The bowls that go to make up this stock are not salable unless you get a particular building where these particular bowls are specified by the architect. We have no special building going up of any size that would use them; there are no two specifications alike and there is a different type of bowl and a different type of urinal and a different type of lavatory going into each building. Q. Why do you carry that as a catalogue number, then? A. We carry in our catalogue everything we can get for our customers. Of this particular item we probably carry several dozen types. We do not manufacture these things at all; they come through the manufacturer we deal with. Crane Company manufacture fittings; Hurlbut fittings.

(Testimony of Frank Downie.)

The COURT.—Q. Do you know whether or not the manufacturers carry these in stock? A. They do not carry them in stock. They are only made when orders come in from different branches, requesting them. A—No. 6, \$1,483.00, is what we call Drainage fittings. They were ordered March 11, 1920; delivered October 15, 1920. That was a special order from Olson Company.

Order produced, received in evidence and marked Exhibit 274 (Oakley), as follows:

**Defendant's Exhibit No. 274.**

(Oakley.)

Date, March 11, 1920.

Order No. 27—Crane Company.

Ship to BEN OLSON CO. (Scan. Amer. Bank).

At Tacoma.

All Galvanized.

1—6	x6	—90	Deg.	Y—Fig.	1020
39—6	x4	—90	“	Y— “	1021
6—x	6x	—45	“	Y— “	1028
2—6"		—Long	Turn	90° Ell	Fig. 1001
1—6"		—Short	“	45° “	“ 1003
8—4	x1½	—45°	Y—Fig.	1029	[729]

Exhibit 274 (Continued).

2—4	x3	—45°	Y—Fig.	1029
10—4	x4	—45°	Y— “	1028
4—4	x4	—90°	Y— “	1020
73—3	x1½	—45°	Y— “	1029
4—3	x3	—45°	Y “	1048
1—3		—Long	Turn	90° Ell Fig. 1001
3—3		—Short	“	Ell 45°— “ 1003

(Testimony of Frank Downie.)

39—2½x1½—45°	Y—Fig.	1029
3—2½ — 90°	Y—Fig.	1028
6—2" Cross	Fig	1024
18—2 x2— 90°	Y—Fig.	1020
35—2" Plain P. Trap	"	1059
20—2" Long Turn	90° Ell	1001
30—2" Short	" 45° Ell	1003
120—1½ Don	90° Y—Fig.	1024
100—1½ —	90° Y—Fig.	1020
10—1½ —	90° Y Ell Fig.	1057
50—1½ —	45° Str. Ell	" 1058
250—1½ —	45° Ell	" 1003
50—1½ —	90° Ell	" 1001

When they put in an order we would take it at different prices for each item. This material which was delivered in October, was taken over to the building. Shortly after the operation closed I checked it up and some of the fittings had been installed and the rest were still lying on the ground. "A"—7, \$6,118.90, closets, fittings, etc., was included in the order of February 20th, the final delivery of that order has not really been made of the entire shipment; that is the one that I explained that the 86 Hurlbut fittings and one outfit complete had been taken away and that the remainder of the shipment is over in our store building here in Tacoma. 85 Hurlbut fittings and one complete outfit was delivered on the day we billed our material and there were 85 complete outfits at our place, but on account of them taking away the connecting outfit we told them we would have to consider it was a complete shipment.

Final delivery of Exhibit "A"-2, pipe, \$5,489.01, was delivered July 1st, 1920.

Order produced, received in evidence and marked Exhibit 275 (Oakley), as follows: [730]

**Defendant's Exhibit No. 275.**

**(Oakley.)**

Tacoma, Washington, Feb. 26, 1920.

Crane Company,

City.

Dear Sirs:

Kindly enter our order for the pipe Scandinavian-American Bank Building, same to be genuine wrought iron pipe:

1000 ft.	1½	Blk.	@	6.92	per C
2700 ft.	¾	"		8.80	" "
2500 ft.	1	" "		13.00	" "
1800 ft.	1¼	"		17.58	" "
1300 ft.	1½	"		21.02	" "
1200 ft.	2	"		30.45	" "
757 ft.	2½	"		47.00	" "
816 ft.	3	"		61.96	" "
54 ft.	3½	"		74.11	" "
200 ft.	4	"		87.58	" "
112 ft.	5	"		118.95	" "
120 ft.	6	"		154.24	" "
330 ft.	8	"		208.16	" "
55 ft.	10	"		266.48	" "
2600 ft.	1½	" Galvanized		8.62	" "
2000 ft.	¾	" "		10.59	" "
1300 ft.	1	" "		15.65	" "

(Testimony of Frank Downie.)

1400 ft.	1¼	“	“	20.17	“	“
3300 ft.	1½	“	“	25.31	“	“
1400 ft.	2	“	“	35.50	“	“
1150 ft.	2½	“	“	54.41	“	“
2800 ft.	3	“	“	71.65	“	“
132 ft.	3½	“	“	85.56	“	“
2400 ft.	4	“	“	101.39	“	“
0 ft.	5	“				
750 ft.	6	“	“	178.58	“	“

We expect to need this pipe in sixty to ninety days, so govern yourselves accordingly.

Yours truly,

BEN OLSON COMPANY,

By M. O. HERBER.

WITNESS.—That order was a requisition for all the pipe.

In Exhibit “A”—4, \$4,730.58, was delivered November 17, 1920. Our claim is for \$21,000 odd dollars, which covers nothing but what we have actually delivered on the job, with the exception of 85 outfits, which have been discussed. [731]

Further Cross-examination.

(By Mr. METZGER.)

Witness is shown a catalogue and asked if it was Crane Company Catalogue issued in 1915.

WITNESS.—Yes, that is a 1915 catalogue.

Q. Now in that catalogue you describe a large number of articles, plumbing fixtures by number?



(Testimony of Frank Downie.)

A. Yes.

WITNESS.—We are not prepared to supply all of those articles from stock. We mean that anything that is shown in Crane Company catalogue can be supplied at any time it is required, by order, that is, if it can be had. Many articles in that catalogue are what we call special and are made on request. We do not offer every article shown in the catalogue as a standard article of that kind. We offer it just as it is shown. In the catalogue we say “give explicit and complete specifications for goods not standard, accompanied if possible, by sketch.” If an article is described by reference to the plate number here it would not be a standard article within the terms of these instructions. If you order according to plate number no other instructions were required and if there were any other devices or changes from the plate number, they have to be explicit and complete specifications. I might perhaps explain that outfit in there a little clearer so that you will understand what we were up against on these particular 86 articles. The biggest manufacturer of these outfits in the United States is the Standard Sanitary Manufacturing Company of Pittsburg. We originally tried to place the order for the bowls making up this outfit with them, and they absolutely turned it down, stating that they did not make them any more and they would not take them, and we had to look around to get these particular bowls. These bowls are shown in the catalogue by number. The Hurlbut

(Testimony of Frank Downie.)

fittings we manufacture ourselves; they are made for use of any bowl. We have to know exactly how they want them drilled. It is a heavy casting [732] and weighs practically 100 lbs; it is the piece that goes into the wall behind the closet. They can be drilled in many different ways and when they are placed we have to know where they want that particular fitting drilled. Bowls are ordered specially from fittings and are special. The fittings are drilled at headquarters, not out here, whenever we get an order of that particular type. We do not carry them in stock. We carry in stock several thousand different items of fittings, small sizes principally; what plumbers need every day. We do not carry in stock an installation for office buildings, it would have to be manufactured special. Crane Company have seventy branch houses. The same articles are not supplied everywhere. In different localities the plumbing ordinances are more or less rigid and in that way you never take the same outfit into two buildings. The plates in this catalogue are from actual photographs.

(Witness is shown Exhibit 273.)

Under certain circumstances we may accept cancellation of orders as where it puts us to no inconvenience or where the stuff ordered was to be taken right out of stock. We carry in our stock a standard line of closets, urinals, vitreous and porcelain ware, but no special line. The catalogue does not indicate what is special and what is standard.

Q. That is left for you to determine yourself

(Testimony of Frank Downie.)

whether it is standard or special? A. Perhaps it could be explained a little easier this way: take yourself for instance, if you would go to Crane Company and you were going to put up a building, you would show us the kind of outfits you thought you could put in that building, and we would tell you if we had certain items in stock, but if you wanted that which is special, you would have to order it from the factory. If the architect for a building such as this were willing to use a cheap outfit, probably we could supply it from stock, but we could not supply any further stock, such as is ordinarily used in an office building, from Tacoma. The [733] same remark applies to slop sinks. Catalogues, I think you would find, particularly in the plumbing game, are gotten out mostly for the benefit of architects, so that they can tell what kind of supplies they can order. The closets that we would supply are those shown in the upper right-hand corner of page 374, 2715-2716, that is in the order.

By the COURT.—Is there anything in the catalogue that some manufacturer does not have a mould to make it?

A. No, I would say that they have moulds to make it. It must have been designed by someone.

(By Mr. STILES.)

WITNESS.—Q. Did you receive in your warehouse, some other goods for these people? A. Yes, we have some other goods over in the building which we have not included in our lien. They are urinals

(Testimony of Frank Downie.)

and lavatories made by the Pacific Porcelain Company of San Francisco. We tried very hard to get that order cancelled. The paper shown me is a letter from the Pacific Plumbing Company, dated February 8th, answering letter from our manager requesting [734] the cancellation of the order. This order was absolutely special, the work being for Crane Company only. The letter refers to lavatories and urinals which are not in our claim.

Mr. METZGER.—I object because there has been no delivery and the special contractor who might be entitled to the claim has not made any claim for it.

The COURT.—Doesn't Olson claim for this?

WITNESS.—We have billed Mr. Olsen for that material, also we have not included it in our lien. It has been billed to Ben Olson Company, charged by us against the Ben Olson Company. We expect to receive payment from them.

The COURT.—It will be admitted.

Letter admitted as Exhibit 276 (Stiles), as follows.

Redirect Examination.

(By Mr. FULTON.)

The amount of our lien claim and the amount we sued for is \$20,416.80, less \$22.02, and is for material actually delivered on the Scandinavian-American Building job.

Mr. METZGER.—When you say that is actually delivered it includes, doesn't it, the valve of these 85 closets? A. Yes, that has always been under-

(Testimony of Frank Downie.)

stood,—that these 85 outfits we considered delivered because they too*d* the connecting fittings.

The COURT.—If the Court should hold against that, Mr. Fulton, Mr. Fulton started out to develop the value of the Hurlbut fittings, did you get that? A. \$40.00 a pierce.

The COURT.—If I should have to determine that they retained the rest of the closet, what would the value of it be? A. The combination was sold at \$71.15. Take \$20.00 off of that and you have \$51.15.

The Hurlbut fittings are essential to the complete outfit. The remaining portions we have in our warehouse. We [735] would be very fortunate in getting \$30.00 per outfit for it.

We can supply new Hurlbut fittings to take the place of those delivered by ordering them from headquarters, having them drilled in the way we want them and get them here several months afterwards. We could complete the outfit so that it was not defective in any respect for practically the value of the Hurlbut fittings which are in the Scandinavian-American Building, but after that we would have to have a customer to take them off our hands.

Redirect Examination.

(By Mr. FULTON.)

No part of this for which we have filed lien has been paid. The reasonable market value of Hurlbut fittings, separate and apart from the rest of the toilet outfit would be \$20.00.



(Testimony of Frank Downie.)

(By Mr. OAKLEY.)

Q. Did you receive anything from Ben Olson Company? A. You mean any payment? Q. Yes. A. We always receive payments regularly from Ben Olson Company, yes. Q. What have you received on these orders? A. On these orders, nothing.

The COURT.—You applied it on some of these others? A. Ben Olson Company make small payments to us each month as they always did.

Mr. FULTON.—On open account? A. On open account, and applied on open account.

(By Mr. OAKLEY.)

Q. Did you apply any of it on any items furnished or prepared for delivery to the Scandinavian-American Building Company? A. No, sir. Q. During any of that period? A. No, sir. Q. How much did you receive during that period? A. What period? [736] Q. That you were delivering the material. A. Ben Olson Company were doing other jobs at the same time they were doing this bank job, and any payment we received from them we applied on open account. I can give you any payments they made any particular month. The payments were all applied on open account. Q. Were your charges all made on open account? A. The charges, with the exception of the material included on our lien, is specifically marked as Scandinavian-American Building job. Q. Well, did you bill him for that? A. We billed him for it.

(Testimony of Frank Downie.)

Q. Did you get any check in response to that billing? A. No, sir.

WITNESS.—Before we started billing out any material for this particular job, Ben Olson owed us approximately \$15,000, before we charged anything on this job, and from that time to the end of the year, they paid us \$16,000, which left practically the same amount owing on their account as before they started on the job at all. They are one of our biggest customers, you understand, in Tacoma, and carry always a big account, so that naturally when we got any checks in, it was cleaning up the old account. The total checks received did not amount to a thousand dollars more than the old account, during all of that period. Q. How much did they owe you at the end of that period? A. Of what period? Q. Of the year, January. A. At the end of last year? Q. Yes. A. They owed us at that time \$15,786. Q. At what time? A. At the end of January, 1920, but you want to remember that,—Did you say December or January? Q. December 31. A. End of December, \$15,786, but at the end of January,—I want you to remember we delivered quite a lot of material to the job in January before the thing closed up, so that the January account would show that we sold Ben Olson Company \$24,349. [737]

FROM CLAIM OF CRANE COMPANY.

**Testimony of H. S. Prescott, for Crane Company.**

H. S. PRESCOTT, for Crane Company, sworn, testified:

(By Mr. FULTON.)

I am assistant local manager of Crane Company. I have been in that position about twelve years. I am familiar with the negotiations that led up to the sale to Ben Olson Company of plumbing supplies and materials to be used in this building in the City of Tacoma.

The item called for in Exhibit "A"-2, attached to the lien notice, amounting to \$5,489.01, was a carload of pipe received by us and turned over to the Ben Olson Company and taken by their truck to the building and checked by an employee of the Scandinavian-American Building Company. Exhibit "A"-3, calling for an item of \$5.20, was a small item delivered to an employee of the Ben Olson Company and taken to the building. I am familiar with the reasonable market value of plumbing goods here in the city, and the value set opposite these various items is extremely reasonable. Exhibit "A"-No. 4 attached to the lien, amounting to \$4,730.58 covers a carload of pipe delivered on Ben Olson Company's order, which was unloaded in the same way as the first. It covers the second delivery on their order for pipe and was delivered to the building. The amount specified is the reasonable value of the property. Exhibit "A"-5 for

(Testimony of H. S. Prescott.)

\$7.21 covers material delivered to a representative of Ben Olson Company who was working on the building, and delivered to the building. Exhibit "A"-6, amounting to \$1433.83 covers the amount ordered for drainage fittings which was brought on from the factory, turned over to Ben Olson Company and delivered at the building. The amount is the reasonable value of that property. Exhibit "A"-7, calling for \$6,118.90, covers the closet outfits, a portion of which were delivered to Ben Olson Company and delivered on the building, namely, [738] one outfit complete and 85 connecting fittings. The other portions of the outfit are not out at our warehouse. These outfits are in four main parts, in which one, the Hurlbut fittings, has been separated. The amount \$6,118.90 is the reasonable value of the 86 outfits complete. The reasonable market value of the Hurlbut fittings bought separately would be approximately \$20.00 apiece. We will take \$10.00 apiece for the other portions of the outfit retained by us. That is all we could get for them. Exhibit "A"-8 is an invoice of \$7.27 for small fittings delivered to the representative of the Ben Olson Company for the Scandinavian-American Building Company, our requisition stating that it was for the Scandinavian-American Building Company. Exhibit "A"-9 calls for \$25.14, which was delivered to a representative of the Ben Olson Company, who was employed on the building, and is the reasonable value of the property covered thereby. Exhibit "A"-10 for \$2.71 covers pieces of pipe that

(Testimony of H. S. Prescott.)

were delivered to the Scandinavian-American Building job and is the reasonable value of the property. Exhibit "A"-11 for \$35.92 covers drainage fittings which were delivered to the building, and is the reasonable value of those items. Exhibit "A"-12, \$100, covers an item which was picked up by a representative of the Ben Olson Company on a requisition of the bank building for use in the building. Exhibit "A"-13 for \$2.10 covers labor performed by us on a piece of pipe they brought down from the building. It was threaded and returned. Exhibit "A"-14 for \$8.30, covers special nipples cut for the bank job and used on the building and is the reasonable value. Exhibit "A"-15 for \$48.10 covers fittings used in the new building and is their reasonable value. Exhibit "A"-16 for \$28.60, covers drainage fittings used in the building and necessary therefor. Exhibit "A"-18, \$2245.45, covers [739] final delivery on their original order for the pipe which was delivered at the building and used there and was the reasonable value of said pipe. Exhibit "A"-18, \$1.19, covers fittings delivered to Ben Olson Company and used on the building. Exhibit "A"-19, \$2.87, covers another special nipple cut for that work in the bank and is the reasonable value of it and was used in the building.

Cross-examination.

(By Mr. METZGER.)

Ben Olson Company did not make a general contract for all of the plumbing supplies and fittings



(Testimony of H. S. Prescott.)

required for their plumbing contract with the Building Company. They made piecemeal arrangements from time to time as they determined upon their requirements. Exhibit "A"-2 covers part of one contract; the other parts of that contract are in Exhibit "A"-4 and "A"-17. There were three pipe invoices, the date of the last one being November 17, 1920. It was at the time of the commencement of delivery of that order that we gave a notice which Miss Clark testified to. Exhibit "A"-5, "A"-6, and "A"-7, were separate and distinct orders placed in writing. Exhibit 270 was written in compliance with the request to confirm to order contained in Exhibit 273. The closets furnished are those indicated by the Plate No. B-2716, as near as we could pick it to fit the architect's specifications, which varied from our plate number. I am familiar with the catalogue put out by our company, which was put out for the benefit of architects, plumbers, contractors, engineers and owners, to enable them to see that we were in position to supply any kind of plumbing fixtures. Specifications and sketches had to be submitted for the closets and slop sinks. The latter, in order to have rim-guards, had [740] to have rim-guards made up that would fit the sinks. It is our practice, when an order is placed with us of this character, to order it by plate number and accompany it with sketches for details. In the closets it was necessary to show the arrangement and the thickness of the wall. Sometimes they were in a battery and the fittings

(Testimony of H. S. Prescott.)

were necessary to make up these batteries. These details do not affect the bowls or seats, every other part that has connections through the wall is affected. Not all those parts are part of the Hurlbut fitting. There is also a nipple and three bolts which are not taken out of stock but are made up to the proper thickness; that is something that is extra. It is absolutely necessary that the bolts be of proper lengths. It is my remembrance that the specifications probably named the fittings as a Crane Hurlbut, which is a particular pet of ours, but we do not put it out continuously everywhere. The city of Seattle does not accept it; it is not acceptable to their plumbing code.

\$20,416.80, was the amount due Crane Company on account of materials furnished for the Scandinavian-American Building Company's Building here at the time this lien was filed, no part of which has been paid, and that is the amount now due and owing.

Redirect Examination.

(By Mr. FULTON.)

Q. You said that if you could examine the specification, you could explain to Mr. Metzger, in answer to his question as to why you had to send details and specifications with the order? A. Well, the details necessary for us to send on this closet was to get the proper fittings. Those fittings, I could state here, are made up in 24 different styles or types. For instance, if you set three closets in [741] a battery, you may want types 1, 3 and 5,

(Testimony of H. S. Prescott.)

whereas if you set six, you would probably take types 1, 2, 3, 4, 5 and 6. Now it was necessary to go over these plans and in the different places in the building, and locate how many toilets were in a battery; then pick out your fittings accordingly. To ask, of course, that we submit sketches wherever possible, and we do so in order to overcome any chance of error. At the same time there are also left-handed and right-handed fixtures. We do not carry those in stock; they were not standard. There was no article in the specifications that we could fill from regular stock. None of the property described in the order of the Court returning property to Ben Olson Company was covered by lien of Crane Company. None of the property covered by this lien, was returned.

Recross-examination.

(By Mr. BONNEVILLE.)

Specifications all through provide for the use of Crane Company materials as far as I know. The descriptions in the specifications do not follow the descriptions in the catalogue. This catalogue here is catalogue B and circular number 531-B. These plate numbers here where it says B-810, etc., are found in the catalogue. The architect takes a plate number as a type and does not exclude other manufacturers from bidding. It places those as a type or number and he writes the specification giving the Plate number for that type with details. Q. On these closets would the specifications differ very much from the catalogue? A. For instance on the

(Testimony of H. S. Prescott.)

seats. Q. They take a seat from any catalogue number, do they not? A. They take any seat. Q. So that all you have to do is to take out of your general stock the particular number of the seat, place it on the bowl of this catalogue number,—take two catalogue numbers [742] to make up one article, is that right? A. No, not out of our general stock. Q. Well, out of your stock of toilets? A. Yes. Q. The seat was specified as one catalogue number and the bowl as another catalogue number? A. The combination is specified as a catalogue number. Q. You said that they took a different catalogue number for the seat? A. They did. Q. Where else in these bowls are there any difference? A. There was no other difference except what is covered by the circular and catalogue.

Redirect Examination.

(By Mr. FULTON.)

Q. What arrangement did you have with the Ben Olson Company before any request was made upon you for the delivery of the goods. A. Well, we had their statement, after looking over our quotations, that the business was ours. Q. How much of it, was there anything specified as to how much of it? A. Well, they stated that practically 90 per cent of the business was ours.

WITNESS.—At that time this agreement was reached on prices. Specifications were submitted to us with the understanding that they would place requisitions as they could draw the material off the



(Testimony of M. O. Herber.)

specifications and plans. We filled those requisitions.

**Testimony of M. O. Herber, for Crane Company.**

M. O. HERBER, called as a witness for Crane Company, testified in answer to interrogatories by Mr. Fulton as follows:

I am familiar with the goods described in the various exhibits attached to Crane Company's lien. The prices marked after the various items are the reasonable market value of the goods. The property called for by Exhibit "A"-2, amounting to \$5,489.01, went into the building and was delivered to the building. Exhibit "A"-3 calling for \$5.40 likewise the [743] amount is a reasonable charge. Exhibit "A"-4 for \$4,730.50 went into the building. The same is a reasonable charge. Exhibit "A"-5, being an item of \$7.41, Exhibit "A"-6, being an item of \$1,433.83, were all received from Crane Company and went over to the building and were used on the building. Exhibit "A"-7, amounting to \$6,118.90 are the toilets concerning which I have testified in Ben Olson Company's case. Exhibit "A"-8, being an item of \$7.27, was used in the building and the amount is a reasonable charge. Exhibit "A"-9, an item of \$25.14, was also used in the building and is a reasonable charge. Exhibits "A"-10 and "A"-11 were received, used in the building, and those are reasonable charges. Exhibits "A"-12 and "A"-13, "A"-14, "A"-15, "A"-16, "A"-17, "A"-18 and "A"-19 were ordered for



(Testimony of M. O. Herber.)

the building and either used in the building or are on the building now.

And thereafter, and on the 28th day of April, 1922, and after the filing of the decision of the Court, in the cause; and under leave of the Court had and obtained, the witness, M. O. Herber was recalled, and testified as follows:

(By Mr. STILES.)

Q. Mr. Herber, have you made lately a comparison of the items contained in Ben Olson Company's exhibits known as Estimates 1, 2, 3 and 4? A. Yes, sir. Q. Have you that in writing? A. Yes, sir. (Witness handed counsel sheets of yellow paper.) Q. Now, what is this sheet, what does it show? A. It shows the amount of material actually at the building that was not from Crane Company. Q. And who furnished this material? A. We did—come from the shop. Q. And the total amount of it is— A. \$1,173.99.

Mr. STILES.—If your Honor please, for the Court's convenience, I ask that it be admitted as an exhibit. [744]

The COURT.—It will be admitted.

Said paper was received in evidence and marked by the Clerk as Exhibit No. 357, as follows:

**Defendant's Exhibit No. 357.**

**(Stiles.)**

April 4, 1922.

The following are items in Estimates No. 1 and #2 and #4 left at the Building and not obtained from Crane Co.

(Testimony of M. O. Herber.)  
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April 4, 1922.

The following are items in Estimates No. 1 and #2 and #4 left at the Building and not obtained from Crane Co.

## Estimate No. 1.

6" soil pipe and fittings for		
Alley .....	\$ 57.00	
4" Galv. Pipe on 11th .....	40.00	
Cartage on Carload of pipe	48.00	145.00

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## Estimate No. 2.

City Water Meter and service .....	450.00	
100 ft. 4" Blk. pipe for Temporary Closet .....	131.22	
Soil pipe and fittings .....	74.00	
Water pipe and fittings ....	15.00	
Galv. Iron Toilet trough ....	52.00	722.32

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## Estimate No. 3.

None.

## Estimate No. 4.

Hangers and Angle Iron ....	11.50	
Dynamo and cutting Oil ....	5.50	
Steel Rods for Hangers ....	31.50	
Hose Coupling Arco Sealit ..	25.00	
Saddle Clip .....	35.81	
Hanger Iron .....	6.00	
Blacksmith coal .....	6.00	
300 ft. $\frac{1}{8}$ x1 Band Iron )		
50 ft. $\frac{1}{4}$ x1 Band Iron )		
100 ft. $\frac{5}{8}$ x2 Band Iron )		
200 ft. 1x1 $\frac{1}{4}$ Stove Bolts )	35.05	

(Testimony of M. O. Herber.)

Ajax Electric Wiring .....	78.31	
City of Tacoma Meter in-		
stalled .....	72.00	
	306.67	306.67
		\$1,173.99

Q. Now, did the decision of the Court relating to Crane Company contain any reference to the labor? A. No. Q. Which was some \$2,200? A. \$2,279 I believe. Q. Now, those items contained in Estimates 5 and 6 and the Godfrey material and the material released by the Court and taken back to the shop and the material at the shop, have been refused allowance. State whether or not those items would be necessary in completing that job? A. They will. Q. Now, can you state to the Court what the actual raw [745] costs of those separate items were? A. \$20,231.54. Q. Well, just give us the separate items? A. Items at the shop— Q. Commence with Estimate No. 5,—Estimate No. 5, \$6,132.66,—what was the actual cost of that? A. \$4,385.22. Q. As to Estimate No. 6, which was \$12,910.76, how much was that? A. \$10,061.87. Q. And the Godfrey materials, what was that, which was shown as \$2,250 in the evidence? A. \$1,593.75. Q. The question is what was the actual cost of the Godfrey materials which were at the shop?

The COURT.—Estimate No. 6 he said was ten thousand—

Mr. STILES.—The Godfrey materials are at—



(Testimony of M. O. Herber.)

tached to No. 6, but the materials are at the Olson Company's shop.

WITNESS.—On the Godfrey item of \$2,250, the cost is \$1,593.75. Q. And other materials at the shop which were put down at \$5,875.60. A. Item at the shop \$5,875.60,—that raw cost \$4,190.70. Q. In completing the building would you have had to use this material? A. Yes. Q. And also would you have had to use the original amount which was stated necessary to finish, \$16,691.74? A. Yes, sir.

The COURT.—The \$16,000 is made up of the items of \$11,937 and \$5,875? A. No.

The COURT.—Where do you get that \$16,000?

Mr. STILES.—\$16,691.74 was testified to originally as the amount necessary to complete the building.

The COURT.—You are getting at the amount of your judgment?

Mr. STILES.—Yes, that's all. We will show how it comes out after a while.

The COURT.—This item of \$16,691 is what it would cost Ben Olson Company to complete what they had to do, to buy the additional materials?

Mr. STILES.—Yes. [746]

The COURT.—That he had not yet obtained?

Mr. STILES.—That he had not yet obtained. I will say this, it does include \$4,900 of material that he withdrew; that is, if the same material had been replaced. It includes that.

(Witness excused.) [747]

FROM TESTIMONY IN CLAIM OF PUGET  
SOUND IRON & STEEL WORKS, DE-  
FENDANT AND COUNTER-CLAIMANT.

**Testimony of W. E. Morris, for Puget Sound Iron  
& Steel Works.**

W. E. MORRIS, on behalf of claimant, sworn,  
testified:

(By Mr. BATES.)

WITNESS.—Am Secretary of Puget Sound Iron  
& Steel Works, in charge of the business. We  
straightened structural steel from the Scandina-  
vian-American Building, that had been bent and  
twisted. Cards admitted show the time employed  
by the men, and the rate of wages. The bill was  
\$495.90.

Cross-examined.

(By Mr. OAKLEY.)

\$2.75 was charged for the blacksmith per hour;  
welder, same; helper \$1.50; crane helper \$2.25 to  
\$2.50. We paid the blacksmith \$1.50; welder \$1.00,  
crane helper 57½ cents.

There is the overhead, the furnace to be kept up  
and the machine-shop. We figure that as about 125  
per cent of the labor cost.

Redirect.

(By Mr. BATES.)

The charges on the bill shows the machinist at  
\$1.50 an hour and shows the crane at \$2.00 an hour.  
There is an expensive crane that is used in the  
handling of this material. If we only charged 15

(Testimony of W. E. Morris.)

per cent above the craneman's wages we would be losing, and we have to take into consideration the investment in the plant and there is the overhead, the expense of maintenance. Machine-shops when they go out to figure will figure from one hundred and twenty to one hundred and twenty-five per cent overhead expense. [748]

FROM DEPOSITION OF CHARLES DRURY,  
A WITNESS FOR COMPLAINANT, Mc-  
CLINTIC-MARSHALL COMPANY.

**Deposition of Charles Drury, for McClintic-Marshall Company.**

CHARLES DRURY, sworn, testified as follows:  
(By Mr. LANGHORNE.)

Q. Are you acquainted with a company or corporation known as the Scandinavian-American Building Company? A. I am. Have been acquainted with it ever since its organization, in December, 1919, I think. I was a director of the Company and President of it. Am still President, I suppose. Q. Are you acquainted with a corporation known as the Scandinavian-American Bank? A. I am. I was a director in the bank and chairman of the Board of Directors; was elected chairman in January, 1920; became a director in January, 1919. Q. What was the purpose for which the Scandinavian-American Building Company was organized? A. To erect and finance a bank building for the Scandinavian-American Bank, at Eleventh and Pacific.

FROM DEPOSITION OF G. L. TAYLOR.

**Defendant's Exhibit No. 7.**

SCANDINAVIAN-AMERICAN BANK.

Tacoma, Washington, June 16, 1920.

C. D. Marshall, President,  
McClintic-Marshall Company,  
Pittsburg, California.

Dear Sir:

This morning we received the following telegram:

\* \* \* \* \*

In our former letter to you we pointed out that our steel contract was awarded to your company under representations that the necessary steel for the entire building was to be taken out of stock in five different yards as we remember it, and when I was in the East the last time, being with your Philadelphia representative about April 5th, I was assured that the first shipment of steel would go forward not later than the 10th of April. Now it turns out that the rolling material has been secured from [749] the mills and that the steel was not in stock at all. I wish to point out again that we have been ready to erect this steel for the past six weeks and that the delay is costing us \$5,000.00 per month in interest and carrying charges on the building, and while we are not trying to attach any undue blame to your company for the delay, nevertheless, we think you ought to exert every means within your power to see that this material is moved promptly.

Hoping to hear from you very often regarding this matter, I beg to remain,

Yours very truly,

O. S. LARSON,  
President.

FROM DEPOSITION OF G. L. TAYLOR.

**Defendant's Exhibit No. 8.**

SCANDINAVIAN-AMERICAN BANK.

Tacoma, Washington, June 14, 1920.

Mr. C. D. Marshall,

McClintic-Marshall Company,

Pittsburg, Pa.

Dear Sir:

Enclosed herewith please find confirmation of night letter sent you to-day, and while we have no doubt that you have done everything possible about the movement of this steel, we wish, nevertheless, to point out that the foundations for this building have been completed for practically a month even though we have been delaying the work on account of the nonarrival of the steel, and that now the investment in the foundation and the real estate on which it stands is costing us approximately \$5,000.00 per month during the time that the building is being delayed.

\* \* \* \* \*

Hoping to hear from you regarding this matter, and with kindest personal regards, I beg to remain

Very truly yours,

O. S. LARSON,  
President. [750]



FROM DEPOSITION OF G. L. TAYLOR.

**Defendant's Exhibit No. 9.**

SCANDINAVIAN-AMERICAN BANK.

Tacoma, Washington, June 23, 1920.

PERSONAL.

C. D. Marshall, President,  
McClintic-Marshall Company,  
Pittsburg, Pa.

Dear Mr. Marshall:

I wish to acknowledge receipt of the following telegram from you received this morning:

\* \* \* \* \*

At the same time, we wish to announce that the first shipment of steel, being the car of grillage, arrived in the yards in Tacoma this morning and will be unloaded this afternoon.

I have already pointed out to you the necessity for quick action in moving this steel on account of the fact that a public institution is involved in the construction of this building, and that as far as possible, a bank should avoid public criticism, even that of being criticized for being slow in the construction of a bank building. May we not have the assurance from you that this contract of ours will have the right of way from now on?

Very sincerely yours,

O. S. LARSON,  
President. [751]

FROM DEPOSITION OF G. L. TAYLOR.

**Defendant's Exhibit No. 10.**

SCANDINAVIAN-AMERICAN BANK.

Tacoma, Washington, June 29, 1920.

H. H. McClintic, Vice-President,  
McClintic-Marshall Company,  
Pittsburg, Pa.

Dear Mr. McClintic.

This is to acknowledge receipt of your letter of  
June 24th.

\* \* \* \* \*

We are very much surprised to learn that the contract you have for furnishing steel for the Telephone Building at Seattle was let two months later than the contract for our bank building, and you have to date delivered considerable more steel to the Seattle Telephone Building than you have delivered to this bank building. I do not want to be bothering you by continually writing to your company about this matter, but I do hope that you will bend every effort to get this steel delivered as quickly as possible. You have got to realize that in this matter you are dealing with a banking institution which should at all times, as far as possible, avoid any public criticism, even on such a matter as this. Upon receipt of this letter, I would like to have you write me fully as to the progress of this steel order and when we may expect to get some more cars on the way out here.

With kind personal regards,  
Very truly yours,

O. S. LARSON,  
President. [752]

FROM DEPOSITION OF G. L. TAYLOR.

**Defendant's Exhibit No. 11.**

SCANDINAVIAN-AMERICAN BANK.

Tacoma, Washington, July 6, 1920.

SPECIAL DELIVERY.

C. D. Marshall, President, or  
H. H. McClintic, Vice-President,  
McClintic-Marshall Company,  
Pittsburg, Pa.

Gentlemen:

Referring to my former letters to you, I beg to enclose herewith a picture taken July 2d, during the noon-hour, of the two corners at 11th Street and Pacific Avenue, in Tacoma, showing in the extreme background, the Bank of California Building, next to it, the W. R. Rust Building under construction and in the foreground the foundations and the grillage just received for the new Scandinavian-American Bank Building. Construction on the Rust Building was started several weeks after the placing of foundations of the Scandinavian-American Bank Building had begun. Mr. Rust purchased his steel in Minneapolis, and we understand that the entire delivery will be effected on July 20th. This picture brings forcibly before us

the actual situation regarding the construction of our building.

I hope that you gentlemen, Mr. Webber and Mr. E. E. Davis, the steel erector, who has just left here, will find some way to get our steel here at once.

With the kindest regards,

Very sincerely yours,

O. S. LARSON,  
President. [753]

FROM DEPOSITION OF G. L. TAYLOR.

**Defendant's Exhibit No. 12.**

SCANDINAVIAN-AMERICAN BANK.

Tacoma, Washington, July 20, 1920.

Mr. H. H. McClintic,

Vice-Pres. McClintic-Marshall Co.,

Pittsburg, Pa.

Dear Sir:

\* \* \* \* \*

We have previously pointed out to you that the steel order was awarded to your company from among several competitors on the representation by your Philadelphia representative that the most of the steel would be taken out of stock in five of your different yards. It now turns out that you did not have the steel at all at the time this representation was made. We could have done a great deal better buying steel in Portland and one or two other places.

\* \* \* \* \*

If this material can be had in the country it

seems to me that it is up to your people to buy it wherever you can get it and get it out here immediately in order to save us the added carrying charges, which are accruing every day, the public criticism, and the added humiliation which has come to us by reason of the nonarrival of this steel.

\* \* \* \* \*

Yours very truly,

O. S. LARSON,  
President. [754]

FROM DEPOSITION OF G. L. TAYLOR.

**Defendant's Exhibit No. 14.**

SCANDINAVIAN-AMERICAN BANK.

August 6, 1920.

McClintic-Marshall Company,  
Pittsburgh, Penn.

Gentlemen:

Referring to your contract of February 5, 1920, for the furnishing of steel for the Scandinavian-American Bank Building, you, of course, are advised that there will be a substantial increase in freight rates beginning on September 1, 1920. Under your contract with us you agreed "to furnish and deliver f. o. b. cars there works, present rates of freight allowed Tacoma, Washington."

Under these circumstances we deem it proper to advise you that it is imperative that the shipments be made before September 1st.

Owing to the delays already occasioned, through no fault of ours, we are daily sustaining heavy



(Testimony of Geo. G. Williamson.)

losses; hence we urge prompt shipment of our material.

Very truly yours,  
SCANDINAVIAN-AMERICAN BUILD-  
ING CO.

By CHARLES DRURY,  
President. [755]

**Testimony of Geo. G. Williamson, for Tacoma  
Millwork Supply Company.**

GEO. G. WILLIAMSON, a witness called and sworn on behalf of the Tacoma Millwork and Supply Company, testified:

I was one of the trustees of the Scandinavian-American Bank until May 1920; I was also one of the trustees of the building company. Mr. Drury was president of the Building Company and seemed to be active head under the supervision of the architect and superintendent, Mr. Wells, I think Mr. Larson had most of the deals with Mr. Simpson, as far as my knowledge goes. I do not know from what source the building company got any money during February and March, 1920. I know that loans were made to the building company in April, 1920; that was reported at the director's meeting on the 7th day of May, that a loan had been made on the 14th day of April. That is when I resigned, upon finding that out. I knew nothing at all about any advance as made against the Capital stock of the building company until some time after the 8th day of January, 1921. I continued as a director of the Building Company nominally until some time

(Testimony of Geo. G. Williamson.)

after the 8th day of January, 1921. There was only one meeting, I think, between May 1920 and January 1921. I was present at a conference in Seattle at which the Insurance Company's attorneys were present and Mr. Simpson and Mr. Chilberg and Mr. Larson. There seemed to be an understanding there at that time that the Metropolitan Life Insurance Company had agreed to lend \$600,000 as a first mortgage on this building. I know of no written contract to that effect. It was my impression up until the spring of 1920 that Mr. Simpson represented the Metropolitan Life Insurance Company, when I was told by the Metropolitan Life Insurance Company's attorneys in Seattle that he did not. The mortgage was made to him as mortgagee, but there was no agreement or understanding at any time that he was to be the party principal to furnish the money. It was my understanding that the Metropolitan Life had agreed to make the loan [756] when the building was constructed. I have never seen any unconditional promise in writing by the Metropolitan Life Insurance Company to take this mortgage.

Cross-examination.

(Mr. LANGHORNE.)

I went to New York in September, 1919, with Mr. Larson in connection with this loan, this temporary loan. I understood that negotiations had been entered into with the Metropolitan Life Insurance Company for this \$600,000 loan at that time, but I had no personal knowledge of it at all. I first

(Testimony of Geo. G. Williamson.)

learned about that from a telegram sent by Mr. Larson to the bank. I left New York and came home before Larson. At the time I was in New York Mr. Simpson and Mr. Webber were, understood, representing Strauss & Co., to lend the bank building company a million dollars on this property here, which contract was given me for examination, and I told the gentlemen who were representing the interests here that it was an unconscionable thing and nobody would enter into it, it called for a 10% commission to begin with and had every other conceivable hardship that could be put into a contract. Mr. Simpson was connected up with that matter. I understood he was the man that was negotiating it; he is the mortgagee in the \$600,000 mortgage which was subsequently given. I first learned that the Building Company was to give Simpson a mortgage for \$600,000 at Mr. Oldham's office in Seattle, this must have been some time in November, 1919. The mortgage was also prepared in Seattle at the office of Bausman & Oldham by Mr. Oldham. I look it over and examined it after it was prepared. [757] I never agreed personally or individually to give the Metropolitan Life Insurance Company my collateral bond to secure this loan of \$600,000. My impression is that the Metropolitan Life only wanted to loan anything within \$500,000 on this property and Mr. Simpson represented he could get them up to \$600,000 provided the directors of the bank. I never agreed to execute such bond, it was thought of, but I never agreed to it. If that

(Testimony of Geo. G. Williamson.)

letter indicates that the collateral bond of the gentlemen named was to be given to secure the loan until it was reduced to \$500,000, that was not my understanding. Thereupon said letter was received in evidence and marked as Exhibit 177, and is as follows:

**Exhibit No. 177.**

(Flick.)

**METROPOLITAN LIFE INSURANCE COMPANY, NEW YORK CITY.**

November 7, 1919.

Scandinavian-American Building Company,  
Tacoma, Washington.

Dear Sirs:

Subject to approval of title by our Attorneys, and subject also to the approval, in writing, of plans and specifications still to be submitted, and to our being satisfied as to the responsibility of the borrower and collateral bondsmen, our Real Estate Committee has approved your application 9/16/19 for a loan of \$600,000 to be made on the bond (or note) of your corporation, and to be secured by first mortgage (or trust deed) covering premises as described in said application, located northeast corner of Pacific and 11th streets, running to an alley, the plot being 75' on Pacific Street by 120' on 11th Street.

It is understood, however, that this Company is under no obligation to make said loan, and that no contract for said loan shall be considered made un-

til the execution and delivery by the parties of a building loan agreement in the form in use and approved by this Company, as stated in your said application.

The loan is to be made for a term ending Nov. 1, 1935, and to bear interest at the rate of 6 per cent per annum payable semi-annually on the first days of May and November. Both principal and interest are to be payable at this office, at the par of exchange and net to this Company. [758]

On Nov. 1, 1921, \$10,000 is to be paid on account of the principal sum of the loan and the same amount every interest date during the term.

The property is to be improved by a 17-story steel, stone, brick and hollow tile, bank and office building, which is to be built according to plans and specifications still to be submitted to and approved, in writing, by our Architect, Mr. D. E. Waid, No. 1 Madison Avenue, N. Y. City. The building is to be inclosed by August 1, 1920, and completed by Jan. 1, 1921. The building is to be erected in accordance with approved plans and specifications, and the construction is to be subject to the inspection and approval of our Architect. Our Architect is to receive a fee of \$3,000 out of the first advance for his services in connection with examination of plans and specifications, inspection of building during its erection, and for certifying to us when a payment is due under the building loan agreement. His necessary traveling and hotel expenses are also to be paid by you.



To guarantee the completion of said building and the removal of any liens which could take priority to our mortgage, we are to receive the Collateral Bond of Messrs. Chas. Drury, J. R. Thompson, George G. Williamson, J. E. Chilberg, Gustav Lindeberg and Jafet Lindeberg. It is understood that these gentlemen are to be individually and collectively bound under obligation until the loan has been reduced to \$500,000.

Fire insurance for \$850,000, and tornado insurance for \$ None (or such amount as may be sufficient to avoid co-insurance) is to be placed under the direction of our Brokers, Dutcher & Edmister Company, No. 1 Liberty Street, New York City, in companies satisfactory to us. The policies must expire on one date, and are to have attached New York Standard Mortgage Clauses, in favor of this Company, not subject to full contribution, and must by the agents be stamped "Paid."

The papers securing the loan are to be in such form as approved by our Attorneys, and are to conform with our usual requirements in regard to real estate loans. The Attorneys are to furnish us with a complete abstract of title, and official searches, if possible, and must certify to us that the title is good and that the mortgage (or deed) securing our loan constitutes a first and valid lien on property, and that there is no possibility of other liens being filed which could take priority to the same.

We must be furnished with official survey of the property in platform, various stages of construc-

tion, showing the title lines and giving measurements of same, and the location of the walls of buildings on the property, with surveyor's certificate that the walls are plumb, that the buildings stands strictly within the title lines, and that there are no encroachments of other buildings on the property.

Any leases made before the completion of our loan, affecting the premises, must by their terms be made subject to our mortgage for the full amount to be advanced thereunder. Contracts entered into for the construction of the building should contain a clause [759] subordinating the contractors' right of lien to the lien of our mortgage.

The fees and disbursements of our Attorneys for examination of title, preparation and recording of papers, U. S. Internal Revenue stamps, etc., are to be paid by you. Please arrange for examination of title and preparation of papers with our Attorneys Messrs. Bausman & Oldham, Hoge Building, Seattle, Wash.

This letter shall be deemed merely a notice, and shall not be construed as an agreement to make said loan, or as imposing any obligation on this Company to enter into a building loan agreement in respect thereto.

It is understood that the money for this loan is not to be advanced until the building is entirely completed and our Architect can so certify, and our counsel can certify the property is free from liens

(Testimony of Geo. G. Williamson.)

which could affect our mortgage.

Yours truly,

(Signed) WALTER STABLER,  
Comptroller.

WS/H.

Cross-examination.

(By Mr. STILES.)

When I went to New York in September, 1919, I did so at the request of Mr. Larson and Mr. Drury of the bank with the understanding that Mr. Thompson who was in New York would be there for the purpose of considering this proposed loan from Strauss & Company, I went there as the bank's attorney. At that time the Scandinavian-American Building Company had not been organized; my recollection is that the articles of incorporation of the Scandinavian-American Building Company were executed late in November. The minute book of the Scandinavian-American Building Company was thereupon admitted in evidence and marked Exhibit #178. Thereupon certified copy of the articles of incorporation of the Building Company, was received in evidence and marked as Exhibit #179 and is as follows:

**Exhibit No. 179.**

(Flick.)

We, J. E. Chilberg and Gustaf Lindberg, residents and citizens of the United States of America and of the State of [760] Washington, do hereby associate ourselves together for the purpose of form-

ing and becoming a body corporate under the laws of the State of Washington, and in that behalf and to that end we do hereby execute in triplicate, the following Articles of Incorporation:

#### ARTICLE I.

The name of this corporation shall be Scandina-  
vian-American Building Company.

#### ARTICLE II.

The objects and purposes for which this corpora-  
tion is formed, are:

First: To buy, lease, own, hold, mortgage, hy-  
pothecate, bargain, sell and in all lawful ways, ac-  
quire, dispose of, deal in or with, real, personal or  
mixed property of each, every and all kind, nature  
and description, including the bonds, stocks and  
other paper and evidences of indebtedness of other  
corporations:

Second: To raze, construct, alter, and or improve  
or demolish buildings, structures or other appur-  
tenances to real estate:

Third: To borrow money for the purpose of car-  
rying out the objects or any of the objects of this  
corporation and to issue notes, bonds and other  
evidences of indebtedness of the company therefore,  
but shall not issue paper of any kind as a circulating  
medium.

#### ARTICLE III.

The amount of the capital stock of this corpora-  
tion shall be TWO HUNDRED THOUSAND  
DOLLARS (\$200,000.00) divided into two thousand  
(2000) shares of the par value of ONE HUNDRED  
DOLLARS (\$100.00) per share.

ARTICLE IV.

The business of this corporation shall be managed and controlled by a board of seven trustees and the names and addresses of those who shall be the first trustees thereof and who shall manage the affairs of this corporation until Monday the 1st day of March, 1920, are:

J. E. CHILBERG and O. S. LARSON, Residing at Seattle, Wash. [761]

JAFET LINDEBERG, Residing at San Francisco, California.

GUSTAF LINDBERG, CHARLES DRURY, JAMES R. THOMPSON and GEO. G. WILLIAMSON, Residing at Tacoma, Washington.

ARTICLE V.

The time of the corporate existence of this corporation is and shall be fifty (50) years.

IN WITNESS WHEREOF, we have hereunto set our hands and executed these Articles of Incorporation in triplicate, this 18th day of November, A. D. 1919.

J. E. CHILBERG.

G. LINDBERG.

Acknowledged by Chilberg and Lindberg, November 18, 1919.

Received in Office of Auditor of Pierce County, February 26, 1920.

Gustaf Lindberg, Geo. G. Williamson, Charles Drury, and Jafet Lindeberg, qualified as directors by taking the oath of office. Each of the above directors subscribed for one share of stock of the



(Testimony of Geo. G. Williamson.)

par value of \$100.00 each, O. S. Larson subscribed for the balance, \$199,600 worth.

Whether these men who subscribed to the capital stock of the building company were directors of the bank would depend upon when this subscription took place. Mr. Drury was, I think, and Mr. Jafet Lindeberg, and if this was before May, 1920, I was. As to Mr. Jafet Lindeberg, I am not sure, and Mr. Larson. I think Mr. Lamborn was a director of the bank beginning 1921, I mean 1920. Thereupon the corporate minute-book of the Scandinavian-American Bank of Tacoma was introduced in evidence as Exhibit #183.

All I know about the financial arrangements for the Building company was that it was represented that the building was financed outside the bank. That statement was made to the Board of Directors of the bank many times. By Mr. Larson and Mr. Drury. I was told and it was represented to the Board that the [762] building was fully financed. That representation was made by Mr. Drury and Mr. Simpson. I understood Mr. Larson and Mr. Drury were acting in conjunction with Mr. Simpson and Mr. Webber in financing the building. Mr. Drury was president of the building company, Mr. Sheldon was secretary and Mr. Ogden was Treasurer. My last conference was with Mr. Oldham and must have been along about the time the note and mortgage were executed, I think that was in February. My understanding was that there was a commitment from the Metropolitan Life, I have never seen any actual contract on which they com-

(Testimony of Geo. G. Williamson.)

mitted themselves, I am telling you what was represented to me at the meeting. I was acting in the capacity of attorney. Mr. Larson had made that representation to the board of directors of the Bank. The Bank owned the two corner lots upon which the building was being erected and deeded them to the building company. Before that time, a deed was secured from Mr. Drury to the third adjoining lot. I am not sure whether that deed ran to the bank or to the building company. I learned afterwards that the bank did pay for it. The bank deeded the two corner lots to the building company, and Mr. Drury deeded the adjoining lot to the building company, but the bank paid for it. At that time the purpose of deeding this property to the building company was spread upon the books of the bank at the board meeting. It was understood that the bank was going to occupy that building when it was completed. There was a good deal of talk about the bank having a twenty or twenty-five year lease on the ground floor and basement and second floor of the building when completed. There was no lease made that I know anything about. I know absolutely nothing about the purchase of that stock of the building company until January, 1921, directly or indirectly. I think the records show that there were two trustees meetings [763] of the building company. I do not recall being present at but one of them. I had no notice of a special meeting whereby I was apprised of the fact that the bank was buying the stock of the

(Testimony of Geo. G. Williamson.)

building company. I did not know a thing in the world about it directly or indirectly. I know it is a fact, yes, know it from the Bank Commissioner, and I know it from other sources, but I knew nothing about it at all during that time. I learned it in this way. They came in and asked me to endorse my one share of stock over. I endorsed it over and at that time—I never knew prior to that time the bank had advanced a dollar on account of that stock. During the time that I was a trustee of the bank there was absolutely no suggestion ever made that the bank would advance the \$600,000 when that money was obtained from the Metropolitan Life. It was understood by everybody concerned that the Metropolitan Life Insurance Company was submitted to a loan of \$600,000 on that property.

Cross-examination.

(By Mr. OAKLEY.)

The matter of the application to the Metropolitan Life Insurance Company for a loan of \$600,000 was discussed there in New York just before I left. The matter of the loan from Strauss & Company was entirely abandoned before I left. When I left New York there was an understanding that Mr. Simpson, Mr. Webber, and Mr. Larson were in negotiation with Mr. Stabler who had charge of the loans of the Metropolitan Life Insurance Company, a controller or chairman of the loan committee of the Company. After I came back to Tacoma I was directed or requested as Attorney for the

(Testimony of Geo. G. Williamson.)

bank to go to Mr. Oldham's office in Seattle, the firm of Bausman & Oldham, to see him as attorney for the Metropolitan Life with a view to getting those notes and mortgages [764] in shape acceptable to Mr. Oldham as attorney for the Metropolitan Life Insurance Company. At that first meeting Mr. Simpson was present and Mr. J. E. Chilberg and Mr. O. S. Larson. Mr. Oldham submitted a form of note and a form of mortgage such as the Metropolitan Life would accept. I suggested that since he had passed upon it, that he prepare the mortgage note and resolution. They were prepared in his office and sent over here and submitted. The abstract of the property was prepared, brought down to date and turned over to Mr. Oldham. Subsequently he gave us his written opinion on it and thereafter passed the title as merchantable. The matter came up as to the time of filing this mortgage and he said the Metropolitan would insist upon the whole thing if they were going to carry out their contract to make this loan, and that they insisted that the mortgage go on record before any work was done, and we discussed the question of whether or not a lien would lie for the rest of the building there, and that matter was looked into and he concluded that no lien would lie for that, and he said when the mortgage was ready and executed he would come over here and see that it was placed on record before any work was done on the premise. One day he and Mr. Drury came into our office and Mr. Drury and



(Testimony of Geo. G. Williamson.)

Mr. Oldham later were up to look at the premises to see if any work had been done, and afterwards instructed that the mortgage be filed and that was done that day and Mr. Oldham requested me to notify him when it was filed, and a letter was written from our office notifying him of the filing of it later. The witness thereupon identified the mortgage referred to and said mortgage was thereupon offered in evidence as Exhibit #180; a true and correct copy of said mortgage is made a part of the answer and cross-complaint filed herein by J. P. Duke, as supervisor of banking of the State of Washington. [765]

Said Exhibit #180 is as follows:

**Receiver's Exhibit No. 180.**

Scandinavian-American Building Company, a corporation organized under the laws of the State of Washington, with its principal place of business at Tacoma, Washington (hereinafter called the Mortgagor), mortgages to G. Wallace Simpson, of Philadelphia, Pennsylvania (hereinafter called the Mortgagee), the following described real estate situated in Pierce County, State of Washington, particularly described as follows:

All of Lots Ten (10), Eleven (11), and Twelve (12), in Block One Thousand Three (1003), as the same are known and designated upon that certain plat entitled "Map of New Tacoma, Washington, Territory," which was filed for record in the office of the Auditor of Pierce County, Washington, on



February 3, 1875, said property being otherwise described as follows:

Beginning at a point where the northerly marginal line of South Eleventh Street in the city of Tacoma intersects the easterly marginal line of Pacific Avenue; thence northerly along said easterly marginal line of Pacific Avenue a distance of 74,941 feet to the intersection of said easterly marginal line with the northerly marginal line of said Lot Ten (10); then easterly along said northerly marginal line of said Lot Ten (10) a distance of 119,893 feet to a point where said northerly marginal line of Lot Ten intersects the westerly marginal line of Court "A" (said Court "A" being the alley between the aforesaid Block 1003 and Block 1002 in said addition); thence southerly along said westerly marginal line of said Court "A" a distance of 74,941 feet to a point where said westerly marginal line of Court "A" intersects the northerly marginal line of South Eleventh Street; thence westerly along said northerly marginal line of South Eleventh Street a distance of 119,890 feet to the point of beginning;

TOGETHER with all the buildings now erected or that may hereafter be erected thereon.

TOGETHER with all and singular the privileges, tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining; to secure the payment in United States Gold Coin of the present standard of weight and fineness of the principal sum of Six Hundred Thousand Dollars (\$600,000.00), according to the terms and conditions



Ten Thousand Dollars on May 1, 1931;  
Ten Thousand Dollars on November 1, 1931;  
Ten Thousand Dollars on May 1, 1932;  
Ten Thousand Dollars on November 1, 1932;  
Ten Thousand Dollars on May 1, 1933;  
Ten Thousand Dollars on November 1, 1933;  
Ten Thousand Dollars on May 1, 1934;  
Ten Thousand Dollars on November 1, 1934;  
Ten Thousand Dollars on May 1, 1935;

and the balance of said principal sum, to wit, three hundred twenty thousand dollars (\$320,000), on November 1, 1935. Said principal sum shall bear interest from maturity until paid at the rate of twelve per cent per annum. Said principal sum and interest shall be paid in United States Gold Coin of the present standard of weight and fineness, at the office of Metropolitan Life Insurance Company in New York, N. Y.

This note with interest is secured by a first mortgage of even date herewith, executed and delivered by the maker hereof to said G. Wallace Simpson, conveying certain real estate described therein, in Pierce County, State of Washington, the terms whereof are made a part hereof.

It is hereby agreed that if default be made in the payment of this note or any part thereof, or any interest thereon, or if failure be made to perform any of the covenants or agreements contained in said mortgage securing this note, then, at the option of the holder of the same, the principal sum, with accrued interest, shall at once become due and collectible, without notice, time being of the essence of

this contract, and said principal sum shall bear interest from such default until paid at the rate of twelve per cent per annum. [767]

In case suit is instituted to collect this note or any portion thereof, I promise to pay such additional sum as the court may adjudge reasonable as attorney's fees in such suit. I consent to a personal deficiency judgment on the above debt, with the intent that the same may be paid in full, irrespective of the security given therefor.

This contract is to be construed in all respects and enforced according to the laws of the State of Washington

SCANDINAVIAN AMERICAN BUILD-  
ING COMPANY,

By CHARLES DRURY,  
Its President.

And by J. V. SHELDON,  
Its Secretary.

AND THE MORTGAGOR hereby covenants and agrees with the mortgagee as follows:

FIRST. The mortgagor is lawfully seized of the premises aforesaid and the same are free and clear of all encumbrances of every nature and kind whatsoever, and the mortgagor will forever warrant and defend the same, with the appurtenances, unto the said mortgagee against the lawful claims and demands of all persons whomsoever. The mortgagor will pay all taxes assessed against said premises or against this mortgage.

SECOND. The mortgagor consents to a personal deficiency judgment for the debt hereby secured, to



the intent that said debt may be paid in full, irrespective of this security; and in the event of suit brought upon this note or mortgage, the mortgagor agrees to pay such sum as the court shall consider reasonable as attorney's fees and costs.

THIRD. Whenever the singular or plural number is used herein, it shall equally include the other, and every mention herein of mortgagor or mortgagee shall include the heirs, executors, administrators, successors and assigns of the party or parties so designated.

FOURTH. All gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators, motors, bath-tubs, sinks, water-closets, basins, pipes, faucets, and other [768] plumbing and heating fixtures, mirrors, mantels, refrigerating plant and ice-boxes, cooking apparatus and appurtenances, and such other goods and chattels and personal property as are ever furnished by a landlord, in letting or operating an unfurnished building similar to the one herein described and referred to, and which are or shall be attached to said building or buildings by nails, screws, bolts, pipe connections, masonry, or in any other manner, and any building which may be erected during the life of this mortgage upon the land covered hereby, are and shall be deemed to be fixtures and an accession to the freehold and a part of the realty, as between the parties hereto and all persons claiming by, through, or under them, and shall be deemed to be a portion of the security for the indebtedness herein mentioned and be covered by this mortgage.



FIFTH. The mortgagee shall be at liberty, immediately after any default in the payment of the principal of said note or of any installment thereof, or of the interest which shall accrue thereon, or of any tax, assessment, water rate, municipal light or heat rate or charge, or premium of fire insurance, or of any part of either at the respective time therein specified for the payment thereof, upon a complaint filed or any other proper legal proceeding being commenced for the foreclosure of this mortgage, to apply for, and the said mortgagee shall be entitled, as a matter of right, without consideration of the value of the mortgaged premises as security for the amounts due the mortgagee herein or of the solvency of any person or persons obligated for the payment of such amounts, to the appointment by any court or tribunal, without notice to any party, of a receiver of the rents, issues and profits of the said premises, with power to lease said premises, or such part thereof as may not then be [769] under lease, and with such other powers as may be deemed necessary, who, after deducting all proper charges and expense attending the execution of said trust as receiver, shall apply the residue of said rents and profits to the payment and satisfaction of the amount remaining secured hereby, or to any deficiency which may exist after applying the proceeds of the sale of said premises to the payment of the amount due, including interest and the costs of foreclosure and sale; and the said rents and profits are hereby, in the event of any default or defaults in the payment of said principal, or interest, or of any

tax, assessment, water rate, municipal light or heat rate or charge, or insurance, pledged and assigned to the *mortgages*, who shall have the right forthwith, after any such default, to enter upon and take possession of the said mortgaged premises and to let the said premises, and to receive the rents, issues, and profits thereof, and apply the same, after payment of all necessary charges and expense, on account of the amount hereby secured.

SIXTH. The whole of said principal sum shall become due at the option of the mortgagee after default in the payment of interest for thirty days, or after default in the payment of any tax, assessment, water rate, municipal light or heat rate or charge for sixty days after the same shall become due and payable, or after default in the payment of any installment herein mentioned, or immediately upon the actual or threatened demolition or removal of any building erected on said premises.

SEVENTH. The whole of said principal sum and interest shall become due at the option of the mortgagee upon failure of any owner of the above described premises to comply with the requirements of any department of the City of Tacoma within thirty days after notice of such requirement shall have been given to the then [770] owner of said premises by the mortgagee.

EIGHTH. If default be made in the payment of the indebtedness as herein provided or of any part thereof, the mortgagee shall have the power to sell the premises herein described, according to law ;

said premises may be sold in one parcel, any provision of law to the contrary notwithstanding.

NINTH. The mortgagor will keep the building on said premises insured against loss by fire in the sum of at least eight hundred fifty thousand dollars (\$850,000.00), in such manner, terms, and in such companies and for such amounts as may be satisfactory to the mortgagee, until the debt hereby secured is fully paid, and will keep such policies constantly assigned to the mortgagee, and deliver renewals thereof to Metropolitan Life Insurance Company, at its home office in New York seven days in advance of the expiration of the same, stamped "PAID" by the agent or company issuing the same. Said policies and renewals thereof shall contain the New York standard mortgagee clause, with full contribution clause eliminated. All of said policies shall be written to expire on one and the same date. In the event the mortgagor shall for any reason fail to keep said premises so insured, or shall fail to deliver the policies of insurance or renewals thereof to Metropolitan Life Insurance Company, as aforesaid, or shall fail to pay the premiums thereon, the mortgagee, if he so elects, may have such insurance written and pay the premiums thereon, and any premiums so paid shall be secured by this mortgage and repaid by the mortgagor within ten days after payment thereof by the mortgagee. In default thereof the whole principal sum and interest and insurance premiums, with interest on such sums paid for such insurance from the date of payment, may be and shall become due at the election of the mort-

gagee, anything herein to [771] the contrary notwithstanding.

TENTH. Should the mortgagee, by reason of any such insurance against loss by fire as aforesaid, receive any sum or sums of money for any damage by fire to the said building or buildings such amount may be retained and applied by it toward payment of the amount hereby secured; or the same may be paid over, either wholly or in part, to the mortgagor, to enable the mortgagor to repair said buildings or to erect new buildings in their place, or for any other purpose or object satisfactory to the mortgagee, without affecting the lien of this mortgage for the full amount secured thereby before such damage by fire, or such payment over, took place.

ELEVENTH. The mailing of a written notice and demand, by depositing it in any postoffice, station or letter-box, enclosed in a postpaid envelope, addressed to the owner of record of said mortgaged premises and directed to said owner at the last address actually furnished to the holder of this mortgage, or, in default thereof, directed to said owner at said mortgaged premises, shall be sufficient notice and demand in any case arising under this instrument, and required by the provisions thereof or the requirements of law.

TWELFTH. In default of the payment by mortgagor of all or any taxes, charges, and assessments which may be imposed by law upon the said mortgaged premises or any part thereof, or against this mortgage, it shall and may be lawful for the said mortgagee to pay the amount of any such tax,



charge, or assessment, with any expenses attending the same; and any amount so paid, the mortgagor shall repay to the mortgagee, on demand, with interest thereon, and the same shall be a lien on the said premises and be secured by the said note and by these presents; and the whole [772] amount hereby secured, if not then due, shall thereupon, if the said mortgagee so elects, become due and payable forthwith.

THIRTEENTH. And it is further mutually covenanted and agreed that in the event of the passage, after the date of this mortgage, of any law of the State of Washington, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages or debts secured by mortgage for State of local purposes, or the manner of the collection of any such taxes, so as to affect this mortgage, or the note hereby secured, the whole of the principal sum secured by this mortgage, together with the interest due thereon, shall, at the option of the mortgagee, without notice to any party, become immediately due and payable.

IN WITNESS WHEREOF, the mortgagor has hereunto set its hand and affixed its corporate seal, by its officers thereunto duly authorized, this 10th day of March, 1920.

SCANDINAVIAN AMERICAN BUILD-  
ING COMPANY,

By CHARLES DRURY,  
Its President.

(Seal)

Attest: J. V. SHELDON,  
Its Secretary.



State of Washington,  
County of Pierce,—ss.

THIS IS TO CERTIFY that on this 10th day of March, 1920, before me, a Notary Public in and for the State of Washington, personally appeared Charles Drury and J. V. Sheldon, to me known to be the president and secretary respectively of Scandinavian-American Building Company, the corporation which executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed [773] of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal the day and year first above written.

(Seal)

E. F. FREEMAN,

Notary Public in and for the State of Washington,  
Residing at Tacoma.

Attached to Exhibit #180 is the assignment of said mortgage, being Exhibit #180½, to the Scandinavian American Bank of Tacoma, and introduced in evidence as Exhibit #180½, and is as follows:

**Exhibit No. 180½.**

**ASSIGNMENT OF MORTGAGE.**

KNOW ALL MEN BY THESE PRESENTS,  
That G. Wallace Simpson of Philadelphia, Pa., the within named *Mortgage*, in consideration of the sum

of One Dollar (\$1), and other valuable considerations, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer, set-over and convey unto the SCANDINAVIAN-AMERICAN BANK OF TACOMA, of Tacoma, Washington, and its assigns, the within mortgage deed, the real estate conveyed, and the promissory note, debts and claims thereby secured, and covenants therein contained.

TO HAVE AND TO HOLD the same Forever, subject nevertheless, to the conditions therein set forth.

IN WITNESS WHEREOF, the said Mortgagee has hereunto set [774] his hand and seal this 7th day of October, A. D. 1920.

G. WALLACE SIMPSON. (Seal)

State of Illinois,  
County of Cook,—ss.

I, John A. Bussian, a notary public in and for said county, in the State aforesaid, do hereby certify that G. Wallace Simpson, personally known to me to be the same person, whose name subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 7th day of October, A. D. 1920.

(Seal)

JOHN A. BUSSIAN,

Notary Public, Cook County, Illinois.

My commission expires September 5, 1922.

Exhibit #180 shows that it was filed in the Office of the Auditor of Pierce County, Washington, March 10, 1920, by the Scandinavian-American Bank and recorded in mortgage record #225 at page \$320. Fee No. 553364.

Exhibit #180 $\frac{1}{2}$  shows that the assignment of the said mortgage was filed by Guy E. Kelly on January 21, 1921 and recorded in mortgage record #229 at page #248, in the office of the Auditor of Pierce County, Washington. Fee No. 585653.

The mortgage Exhibit #180 was acknowledged before E. F. [775] Freeman, who was Mr. Williamson's law partner.

The minute-book of the Scandinavian-American Bank, pages #417 to #421, was introduced in evidence as Exhibit #181 and is as follows:

**Exhibit No. 181.**

MINUTES OF THE MEETING OF THE  
BOARD OF DIRECTORS OF THE  
SCANDINAVIAN AMERICAN BANK OF  
TACOMA.

Held on Tuesday, February 10th, 1920, at 3:30  
o'clock P. M.

The Board of Directors of Scandinavian-American Bank of Tacoma met in the Argonne Building, pursuant to call on Tuesday, February 10, 1920, at 3:30 o'clock P. M.

Directors present: Charles Drury, Frank Lamborn, Dean Johnson, Gustaf Lindberg, O. S. Larson, George G. Williamson and M. M. Ogden.

Mr. Drury presided and called the meeting to order and a quorum being present, the following business was transacted:

The Board next considered the matter of the transfer of the property owned by the Bank, being its former site and described as:

Lots 11 and 12, in Block 1003,  
"Map of New Tacoma, W. T."

to the Scandinavian American Building Company. This property being encumbered with a mortgage in the principal sum of \$70,000, and the Scandinavian American Building Company having acquired lot 10 adjoining, proposes to erect a sixteen-story office building upon the three lots and for the purpose of financing the erection of said building, proposes to borrow \$600,000, and execute therefor a first mortgage upon said premises and in addition thereto to issue second mortgage bonds against said premises in the principal sum of \$750,000, bearing interest at 6 per cent per annum, payable semi-annually and running for a period of fifteen (15) years and in order to make the proper financial arrangements, it will be necessary that the title to said premises be vested in said Scandinavian American Building Company and the first mortgage placed against said premises before any work or construction of the building shall commence and before any contract shall have been let for the erection or construction of said building, and the Scandinavian American Building Company agreed to execute to the bank a temporary agreement or certificate, by the terms of which it agrees to execute and deliver to this bank,

second mortgage bonds of the par or face value of \$350,000 in payment for [776] said premises, such bond issue to be for not in excess of \$750,000, bearing interest at 6 per cent per annum, payable semi-annually and to run for a period of fifteen (15) years and to contain a provision to the effect that the income from said bonds shall, up to two (2%) per cent of the par value of such bonds, be tax free. After discussion, the following resolution was offered and its adoption was moved by Mr. Larson, seconded by Mr. Lindberg and carried, to wit:

WHEREAS, the SCANDINAVIAN AMERICAN BANK OF TACOMA is the owner of lots 11 and 12 in block 1003, in "Map of New Tacoma, W. T." situated in Pierce County, Washington, which property is at the present time encumbered by a mortgage in the principal sum of \$70,000, and

WHEREAS, SCANDINAVIAN AMERICAN BUILDING COMPANY, a corporation, organized under the laws of the State of Washington, has proposed to purchase said property for the consideration of \$350,000 and proposes to erect upon said premises and lot 10 adjoining, a modern office building of approximately sixteen stories in height and to provide the ground floor thereof with space and accommodations for a Metropolitan banking institution, which space shall be reserved for the use of this bank upon a rental to be agreed upon, and

WHEREAS, for the purpose of financing the construction and erection of said building, the following arrangement has been entered into by said



SCANDINAVIAN AMERICAN BUILDING COMPANY, to wit:

A first mortgage for the principal sum of \$600,000, to be executed by said SCANDINAVIAN AMERICAN BUILDING COMPANY, upon all three lots, which said mortgage must be executed and recorded before actual construction shall begin and before any contract for such construction shall have been let and a series of second mortgage bonds of the total par value of \$750,000, to be executed and secured by a second mortgage on said premises, which said bonds shall run for a period of fifteen (15) years and bear interest at 6 per cent per annum, payable semi-annually and contain a covenant exempting the income thereof equal to 2 per cent of the total par value of said bonds exempt from taxation by the Federal Income Tax Laws, and

WHEREAS, said SCANDINAVIAN AMERICAN BUILDING COMPANY cannot execute said first mortgage or said second mortgage and the bonds to be secured thereby until it shall first have acquired title to said premises, and

WHEREAS, said SCANDINAVIAN AMERICAN BUILDING COMPANY has agreed to execute and deliver to SCANDINAVIAN AMERICAN BANK OF TACOMA second mortgage bonds hereinbefore referred to of the par value of \$350,000 in payment for said real estate as soon as the same can expediently be prepared and be a second mortgage lien upon said premises, and

WHEREAS, temporarily, said SCANDINAVIAN AMERICAN BUILDING COMPANY will execute a certificate or agreement agreeing to so deliver said bonds as soon as the same can be executed as above provided, [777]

NOW, THEREFORE, BE IT RESOLVED, that the President and Cashier of SCANDINAVIAN-AMERICAN BANK OF TACOMA be and they are hereby authorized, directed and empowered to execute and deliver to said SCANDINAVIAN-AMERICAN BUILDING COMPANY a warranty deed of conveyance to said lots 11 and 12, in block 1003, "Map of New Tacoma, W. T." upon receiving from said SCANDINAVIAN-AMERICAN BUILDING COMPANY a certificate or agreement agreeing to deliver to said SCANDINAVIAN-AMERICAN BANK OF TACOMA, within four (4) months from the date hereof, bonds of the par value of \$350,000, bearing interest at 6 per cent, per annum, payable semi-annually and running for a period of fifteen (15) years, which said bonds shall be secured by a second mortgage on the premises known and described as Lots 10, 11 and 12, in block 1003, "Map of New Tacoma, W. T."

It being expressly understood and agreed that the total par value of all of said second mortgage bonds shall not exceed the sum of \$750,000.00.

The Directors next discussed the advisability of holding meetings of the Board at regular intervals and it was moved, seconded and carried that regular meetings of the Board shall hereafter be

(Testimony of Geo. G. Williamson.)

held on the second and fourth Wednesday in each month.

There being no further business, the meeting on motion, adjourned.

CHARLES DRURY,

Chairman.

Attest: M. M. OGDEN,

Secretary. [778]

Mr. Simpson absolutely represented that he had arranged to raise the money on this mortgage. That representation was made absolutely, the money was to be paid on the completion of the building. At the first that was the talk, but later I heard that they had changed their position in that respect.

Exhibit #182 is the declaration of trust signed by G. Wallace Simpson, which I think I remember that this was prepared by me. Said exhibit is as follows:

**Receiver's Exhibit No. 182.**

**DECLARATION OF TRUST.**

I, G. WALLACE SIMPSON, of Philadelphia, Pennsylvania, do hereby certify and declare as follows, to wit:

That I am the person named as mortgagee in that certain mortgage executed by the SCANDINAVIAN-AMERICAN BUILDING COMPANY, a corporation organized under the laws of the state of Washington, to secure the payment of \$600,000.00 according to the terms and conditions of one certain promissory note which said note is set forth in full

in said mortgage; both said note and mortgage being dated March 10, 1920, and filed for record in the Auditor's office of Pierce County, Washington, on March 10, 1920 and recorded in Volume 225 of Mortgage Records at page 320;

That said mortgage was made to me in trust for the use and benefit of the SCANDINAVIAN-AMERICAN BUILDING COMPANY and all sums of money derived therefrom or hereafter to be derived therefrom constitute a trust fund in my hands belonging to said SCANDINAVIAN-AMERICAN BUILDING COMPANY to be paid to it for its use and benefit, and

I DO HEREBY FURTHER CERTIFY AND DECLARE that I have no interest in said note and mortgage other than as trustee for the said SCANDINAVIAN-AMERICAN BUILDING COMPANY, the said note and mortgage having been made to me as a matter of convenience and to enable me to raise funds for the SCANDINAVIAN-AMERICAN BUILDING COMPANY for the purpose of enabling it to erect a building upon the premises described in said mortgage. [779]

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 17th day of August, 1920.

G. WALLACE SIMPSON.

State of Washington,  
County of Pierce,—ss.

I, the undersigned, a Notary Public in and for the said State, do hereby certify that on the 17th day of August, 1920, personally appeared before me G. Wallace Simpson, to me known to be the

individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned,

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

M. M. OGDEN,

Notary Public in and for the State of Washington,  
Residing at Tacoma.

The following extracts are from the minute-book of the bank and part of Exhibit No. 183:

NOW, THEREFORE, BE IT RESOLVED, that the President and Cashier of the SCANDINAVIAN-AMERICAN BANK OF TACOMA be and they hereby are authorized, directed and empowered to execute and deliver to said SCANDINAVIAN-AMERICAN BUILDING COMPANY, a warranty deed of conveyance to said lots 11 and 12, in Block 1103, "Map of New Tacoma, W. T.," upon receiving from said SCANDINAVIAN AMERICAN BUILDING COMPANY a certificate or agreement agreeing to deliver to said SCANDINAVIAN-AMERICAN BANK OF TACOMA within four (4) months from the date hereof, bonds of the par value of \$350,000, bearing interest at 6 per cent [780] per annum, payable semi-annually and running for a period of fifteen (15) years, which said bonds shall be secured by a second mortgage on the premises known and described as  
Lots 10, 11 and 12, in block 1003,  
"Map of New Tacoma, W. T."



It being expressly understood and agreed that the total par value of all of said second mortgage bonds shall not exceed the sum of \$750,000.00.

\* \* \* \* \*

There being no further business, the meeting on motion, adjourned.

CHARLES DRURY,  
Chairman.

Attest: M. M. OGDEN,  
Secretary.

MINUTES OF MEETING OF THE BOARD OF  
DIRECTORS OF THE SCANDINAVIAN-  
AMERICAN BANK,

Held on Friday, April 9th, at 3:30 o'clock, P. M.

The Board of Directors of the Scandinavian-American Bank of Tacoma met in the Argonne Building, on Friday, April 9th, 1920, at 3:30 P. M.

The following were present: Charles Drury, Dean Johnson, G. Lindberg, Frank Lamborn, J. V. Sheldon, and M. M. Ogden.

Mr. Drury presided and called the meeting to order, the following business being transacted:

It was moved by Mr. Johnson, seconded by Mr. Lindberg, and carried, that a loan of \$25,000.00 to the Scandinavian-American Building Company, be authorized.

[781]

\* \* \* \* \*

There being no further business, the meeting adjourned.

CHARLES DRURY,  
Chairman.

Attest: M. M. OGDEN,  
Secretary.

MINUTES OF SPECIAL MEETING OF BOARD  
OF DIRECTORS OF SCANDINAVIAN-  
AMERICAN BANK,

Held on Friday, May 7th, 1920, at 3:30 P. M.

The Board of Directors of the Scandinavian-American Bank of Tacoma met in the Argonne Building, on Friday, May 7th, 1920, at 3:30 P. M.

The following were present: Charles Drury, O. S. Larson, Dean Johnson, George G. Williamson, J. V. Sheldon, and M. M. Ogden.

Mr. Drury presided and called the meeting to order, the following business being transacted:

\* \* \* \* \*

On motion, an addition credit of \$25,000.00 to the Scandinavian-American Building Company was approved.

There being no further business, the meeting adjourned.

CHARLES DRURY,

Chairman.

Attest: M. M. OGDEN,

Secretary.

Mr. STILES.—Also in connection with this case I wish to call upon counsel for the conveyance from Drury, or whoever it was, to the bank Lot 10, and also for the bank's conveyance to the Building Company of Lots 11 and 12, which I wish to put in evidence, and in addition to that, in connection with our case, we want to show the deposition of (1064) Charles Drury, page 3, and also the deposition of Mr. Taylor, taken by the McClintic-Marshall Company, [782] and let-

ters exhibits 7, 8, 9, 10, 11, 12 and 14 of the exhibits in connection with the testimony of Taylor.

**Exhibit No. 183.**

(Flick.)

MINUTES OF MEETING OF THE BOARD OF  
DIRECTORS OF THE SCANDINAVIAN-  
AMERICAN BANK,

Held on Friday, July 23d, 1920, at 3:30 oclock, P. M.

The Board of Directors of the Scandinavian-American Bank of Tacoma met in the Argonne Building, on Friday July 23d, 1920, at 3:30 P. M.

The following were present: Charles Drury, O. S. Larson, G. Lindberg, Frank Lamborn, Dean Johnson, and J. V. Sheldon.

Mr. Drury presided and called the meeting to order and the following business transacted.

The minutes of the Directors' meeting held on May the 28th were read and approved.

The Cashier's report for the periods of from May 26th to June 9th, June 9th to June 23d, June 23d to July 7th, and July 7th to July 22d, were presented and ordered placed on file.

On motion, all new loans and renewals were approved and ratified.

Mr. Larson read the following communication which had been received from Mr. Geo. G. Williamson:

“May 21, 1920.

“M. M. Ogden, Secretary,  
Board of Directors,  
Scandinavian-American Bank of Tacoma,  
City.

Dear Sir:

I enclose herewith my resignation as a Director of the bank and request that you present that same to the Directors at the meeting to be held to-day.

Very truly yours,  
(Signed) GEO. G. WILLIAMSON.” [783]

“May 21, 1920.

“To the Board of Directors of  
Scandinavian-American Bank of Tacoma:

I hereby tender my resignation as a Director of the bank and request that it be accepted immediately.

Yours very truly,  
(Signed) GEO. G. WILLIAMSON.

On motion duly made, seconded and carried, Mr. Larson was instructed to write Mr. Williamson regarding the above.

No further action was taken, and the above resignation was not accepted.

\* \* \* \* \*

There being no further business, upon motion duly made, seconded and carried the meeting adjourned.

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Chairman.

Attest: J. V. SHELDON,  
Acting Secretary.

(Testimony of Geo. G. Williamson.)

This minute-book of the Scandinavian-American Building Company shows that Jafet Lindeberg, Gustaf Lindberg, Charles Drury, and George G. Williamson signed the oath of office. The oath is headed also by the names of J. E. Chilberg and O. S. Larson, I find but four of them qualified.

At the inception of this project it was understood that the building was to cost \$750,000; then it was a million and then a million and two or three hundred thousand. The difference between the Simpson mortgage of \$600,000, and the cost of the building was to be made up of a second mortgage bond issue. Mr. Freeman, my partner, was instructed to prepare a second mortgage bond issue in the sum of \$750,000. Mr. Webber had with him a copy of the mortgage, which was left there at the office and Mr. Stimpson stated at that time and stated to me later and to others that this second [784] mortgage bond issue was provided for and would be—the building company was to give to the bank within four months from the date of these resolutions their second mortgage bonds in the sum of \$350,000. That was for the execution of the deed and a consideration for the deed.

Q. They were to get these bonds for the money that they advanced in addition to the money that would be raised on the Simpson mortgage, were they not?

A. This was to be in addition to that?



(Testimony of Geo. G. Williamson.)

Q. Yes?      A. Yes.

They represented that they had these bonds placed, or a place for them and the \$350,000 of the bonds would retire the obligation of the bank. I learned when Simpson came out here, August, that the Building Company had not received any money on the mortgage. I do not know who else knew it before that. I think it was known before August that the building would cost more than a million dollars. I had a talk with Mr. Simpson about his failure to arrange the \$600,000 mortgage loan as he absolutely not only said he would raise it but said he had it placed. He and Mr. Webber stated that the bond issue was placed and when I questioned him in August concerning it, they brought it up, I did not see how a second mortgage bond issue could be floated, and they stated repeatedly that it was done in Philadelphia. It was my understanding that in August, Mr. Simpson had not secured the money on the mortgage and they had not secured money on the bond issue, —and Mr. Simpson said he had an appointment with Mr. Strauss in San Francisco, or Pasadena and was on his way there to see him. He said he had not been able to place the loan. I learned after I resigned that any moneys other than the loan of April 14, 1920, that went into the building came out of the bank right along. [785]

Cross-examination.

(By Mr. OAKLEY.)

I resigned because it had been absolutely rep-

(Testimony of Geo. G. Williamson.)

resented to the Board of Directors of the *Bank* was not going to put a dollar in that building. There had been representations all along made to the board, relied upon by the board, and I do not think there was a man on the board that did not have that belief and firm conviction. The first time it ever came to my knowledge that the bank had advanced a dollar was the time I told you about, and I got out just as quick as I could. All of the representations had been to the contrary, absolutely, every director of the bank can testify to that, and any man that has any knowledge of the subject. I can identify the signature of Mr. Drury and Mr. Sheldon on this paper which you show me marked Exhibit #184. If a concern issued a bond issue of \$750,000 and delivers \$350,000 of the bond issue to somebody else in payment of a debt, it would leave \$400,000. The representations were made by Mr. Simpson and Mr. Webber, that these bonds had been placed and would be sold when executed and duly delivered, and if they were sold before the bank,—before the four months' period was up, before the bonds were delivered to the bank, the bank would be paid in cash. The only object of the building company was to erect this building, and I suppose everybody assumed that they would use the remaining \$400,000 whatever funds they had for the purpose of building that building. That was the purpose of issuing the bonds, to get money to complete the building. [786]

The witness then identified Exhibit #184, which is as follows:

**Receiver's Exhibit No. 184.**

**CERTIFICATE AND AGREEMENT.**

THIS INDENTURE made this 20th day of February, 1920.

**WITNESSETH:**

That WHEREAS pursuant to resolution of SCANDINAVIAN-AMERICAN BANK OF TACOMA, adopted at a meeting of the Board of Directors of said [787] SCANDINAVIAN-AMERICAN BANK OF TACOMA on the 10th day of February, 1920, a copy of said resolution being attached hereto and marked Exhibit "A" and by this reference made a part hereof as tho set forth in full herein, the SCANDINAVIAN-AMERICAN BUILDING COMPANY agreed to execute to SCANDINAVIAN-AMERICAN BANK OF TACOMA a certificate to deliver to said SCANDINAVIAN-AMERICAN BANK OF TACOMA, bonds of the par value of \$350,000, bearing interest at 6 per cent per annum, payable semi-annually and secured by a second mortgage upon

Lots 10, 11 and 12, in Block 1003, "Map of New Tacoma, W. T." situated in Pierce County, Washington,

the total issue of said second mortgage bonds not to exceed the sum of \$750,000, and

WHEREAS pursuant to said resolution said SCANDINAVIAN-AMERICAN BANK OF TACOMA has executed and delivered to SCANDI-

NAVIAN-AMERICAN BUILDING COMPANY  
this day a warranty deed of conveyance to said Lots  
11 and 12, described in said resolution.

NOW THEREFORE and for and in consideration  
of the execution of said deed the undersigned,  
SCANDINAVIAN-AMERICAN BUILDING  
COMPANY does hereby agree to execute and de-  
liver to SCANDINAVIAN-AMERICAN BANK  
OF TACOMA, within a period of four (4) months  
from the 10th day of February, 1920, mortgage bonds  
of the face or par value of \$350,000, being a part of  
a total issue of \$750,000; said bonds to bear interest  
at 6 per cent per annum, payable semi-annually and  
to contain a tax free covenant with respect to the in-  
come thereon as is provided in said resolution and to  
be secured by a mortgage upon

Lots 10, 11 and 12, in block 1003, "Map of  
New Tacoma, W. T." situated in Pierce County,  
Washington, [788]

and upon the delivery of said bonds this certificate  
to be returned to the undersigned.

IN WITNESS WHEREOF this certificate is  
executed by said SCANDINAVIAN-AMERICAN  
BUILDING COMPANY, by its President and Sec-  
retary thereunto duly authorized, this 20th day of  
February, 1920.

SCANDINAVIAN-AMERICAN BUILD-  
ING COMPANY.

By CHARLES DRURY,  
President.

By J. V. SHELDON,  
Secretary.

## EXHIBIT "A."

WHEREAS the SCANDINAVIAN-AMERICAN BANK OF TACOMA is the owner of lots 11 and 12 in block 1003, in "Map of New Tacoma, W. T.," situated in Pierce County, Washington, which property is at the present time encumbered by a mortgage in the principal sum of \$70,000 and

WHEREAS SCANDINAVIAN-AMERICAN BUILDING COMPANY, a corporation, organized under the laws of the State of Washington, has proposed to purchase said property for the consideration of \$350,000 and proposes to erect upon said premises and lot 10 adjoining, a modern office building of approximately sixteen stories in height and to provide the ground floor thereof with space accommodations for a metropolitan banking institution, which space shall be reserved for the use of this bank upon a rental to be agreed upon and

WHEREAS for the purpose of financing the construction and erection of said building, the following arrangement has been entered into by said SCANDINAVIAN-AMERICAN BUILDING COMPANY, to wit:

A first mortgage for the principal sum of \$600,000 to be executed by said SCANDINAVIAN-AMERICAN BUILDING COMPANY upon all three lots, which said mortgage must be executed and recorded before actual construction shall begin and before any contract for such construction shall have been let and a series of second mortgage bonds of the total par value of \$750,000 to be executed and se-



cured by a second mortgage on said premises, which said bonds shall run for a period of fifteen (15) years and bear interest at 6 per cent per annum, payable semi-annually and contain a covenant exempting the income thereof equal to 2 per cent of the total par value of said bonds exempt from taxation by the Federal Income Tax Laws and [789]

WHEREAS said SCANDINAVIAN-AMERICAN BUILDING COMPANY cannot execute said first mortgage or said second mortgage and the bonds to be secured thereby until it shall first have acquired title to said premises and

WHEREAS the SCANDINAVIAN-AMERICAN BUILDING COMPANY has agreed to execute and deliver to SCANDINAVIAN-AMERICAN BANK OF TACOMA, second mortgage bonds hereinbefore referred to of the par value of \$350,000 in payment for said real estate as soon as the same can expediently be prepared and be a second mortgage lien upon said premises and

WHEREAS, temporarily, said SCANDINAVIAN-AMERICAN BUILDING COMPANY will execute a certificate or agreement agreeing to so deliver said bonds as soon as the same can be executed as above provided.

NOW, THEREFORE, BE IT RESOLVED that the President and Cashier of SCANDINAVIAN-AMERICAN BANK OF TACOMA be and they hereby are authorized, directed and empowered to execute and deliver to said SCANDINAVIAN-AMERICAN BUILDING COMPANY a warranty

(Testimony of Geo. G. Williamson.)

deed of conveyance to said lots 11 and 12, in block 1003, "Map of New Tacoma, W. T.," upon receiving from said SCANDINAVIAN - AMERICAN BUILDING COMPANY a certificate or agreement agreeing

To deliver to said SCANDINAVIAN-AMERICAN BANK OF TACOMA, within four (4) months from the date hereof, bonds of the par value of \$350,000, bearing interest at 6 per cent per annum, payable semi-annually and running for a period of fifteen (15) years, which said bonds shall be secured by a second mortgage on the premises known and described as

Lots 10, 11 and 12, in block 1003, "Map of New Tacoma, W. T.,"

it being expressly understood and agreed that the total par value of all of said second mortgage bonds shall not exceed the sum of \$750,000.

The Directors next discussed the advisability of holding meetings of the board at regular intervals and it was moved, seconded and carried that regular meetings of the Board shall hereafter be held on the second and fourth Wednesday in each month.

There being no further business, the meeting on motion, adjourned.

\_\_\_\_\_  
Attest:\_\_\_\_\_

Cross-examination.

(By Mr. FLICK.)

I will have to admit that I relied upon the fact that the bonds [790] had been placed as stated

(Testimony of Geo. G. Williamson.)

when I was connected with the Building Company. I was nominally a member of the Board of the Building Company on October 10th, 1920. How should I know by virtue of my office if this assignment was made back from Simpson to the bank? I had absolutely no knowledge of that transaction. At that time I had absolutely severed my connection with the bank in an official capacity. I have already told you that I never heard that Simpson had assigned the mortgage to the bank. Moreover, the building company being the mortgagor and somebody else being the mortgagee, couldn't they assign the mortgage without—without having the mortgage—the assignment from Simpson to the bank was never brought to my attention. I could not see the possible necessity for it. He would have the right to assign it without talking to me or anybody else about it.

**Testimony of M. M. Ogden, for Tacoma Millwork  
Supply Company.**

M. M. OGDEN, witness called and sworn on behalf of the Tacoma Millwork and Supply Company, testified as follows:

**Direct Examination.**

(By Mr. FLICK.)

I was cashier of the Scandinavian-American Bank and the cards constituting exhibit 185 are the record of loans made by the bank to the building company.

(Testimony of M. M. Ogden.)

The first time the \$600,000 mortgage appears on the collateral card, or rather as collateral matter, is December 9th, 1920.

### Exhibit No. 185.

(FLICK.)

SCANDINAVIAN AMERICAN BLDG. CO.

CHAS. DRURY, Pres.

Date Recd.	No.	Amt.	Rate	Due	Part Date	Pyts. Amt.	Total Liability	Date Final Payt.
Dec. 8, 18	50335	15,000	6				15,000	
					2/3/20	15,000		2/3/20
Apr. 14/20	52076	25,000		D	6/25/20	25,000	25,000	6/25/20
5/21/20	52652	25,000		D	6/25/20	25,000	50,000	6/25/20
	52076							6/25/20
11/8/20	54920	100,000	6		3/8/21	150,000		
11/8/20	1	50,000	6		3/8/21			12/9/20
	20				12/9/20	50,000		12/9/20
	1				12/9/20	100,000		12/9/20
12/9/20	R. E. 232	200,000				200,000		
12/31/20	R. E. 233	9,133.25				209,133.25		

[791]

### Exhibit No. 187.

(Flick.)

No. 232. Real Estate Loans. Amount, \$200,00.  
 Date Recd. December 9, 1920. Time, D. Date  
 Note, 12/9/20. Int. Rate 6 Due, D. Makers,  
 Scandinavian-American Building Company  
 (memo note), memo of Collaterals, etc. (Over)  
 Back.

(Testimony of M. M. Ogden.)

Note of Scan.-Amer. Bldg. Co. dated 3/10/20 for \$600,000 to G. Wallace Simpson, \$10,000 due 11/1/21 and like amount every six months to and including May 1, 1935. Balance of \$320,000 due Nov. 1, 1935.

Mtge. from Scandinavian-American Building Company to G. Wallace Simpson covering lots 10 and 11 and 12, Block 1003 Map of New Tacoma, W. T. together with all buildings built or to be built and equipped Mtg. #553364 filed in Pierce County March 10, 1920.

Assignment of mortgage from G. Wallace Simpson to Scandinavian-American Bank of Tacoma.

Two abstracts of above described property #26,282 and #27155 both compiled by Tacoma Title Company.

So that on the day we collateralized this mortgage so far as the records show, we increased the loan only \$50,000.

Q. Now, where does it show anywhere in your records that you paid for this stock?

A. The stock of the Building Company?

Q. Yes. This payment was made June 25, 1920.

A. That is carried under "stocks and bonds."

Q. That is carried under stocks and bonds?

A. Yes.

These cards (exhibits 185 and 187) are our regular liability ledger sheets. I know that some of these loans were before the board and some were not. The loan of December 8th, of \$50,000 was not; the one of November 8th, of \$100,000 and \$50,000 was



(Testimony of M. M. Ogden.)

not; On April 9th, there was an authorization of \$25,000 to the Scandinavian-American Building Company. There was present at that meeting directors Charles Drury, Dean Johnson, Gustaf Lindberg, Frank Lamborn, and J. V. Sheldon. Mr. Larson was absent. May 7th, there was an authorization of \$25,000 to the Scandinavian-American Building Company. Mr. Larson was not present when the first one [792] was authorized, but was present when the second one was. I could not say whether Mr. Larson took up with the members of the Board or not this matter of advancing money to the building company. It was not at the board meeting I attended. When the assignment of this mortgage was taken over by the bank, that was not done at a board meeting. As to whether the bank paid anything for this assignment, the bank was making advances to the building company. Simpson was the assignor. The bank records do not show any payments to Simpson nor any payment to the Metropolitan Life Insurance Company, or anybody else, except those two advances spoken of for \$25,000 and \$25,000. Assuming that this assignment was taken October 7th or 8th, up to that time so far as any advances are concerned they comprise two for \$25,000 each and one for \$15,000, all of which had already been advanced. So that on the day of the assignment the only advance that the bank had was the advance of the stock of the company. I do not know that it is a fact that it was proposed that the bank owned this stock of the building com-

(Testimony of M. M. Ogden.)

pany from the beginning, I never heard Mr. Larson mention that stock.

Q. You knew that the bank purchased the stock of the Building Company; originally made the arrangement to purchase the stock way in the early spring? A. No.

Q. You know they did purchase it June 25, don't you?

A. I didn't know that until long afterwards.

Q. But you did find out that they purchased it on June 25th?

A. Yes, I found out later that the entry went through on June 25th.

Q. Entry on your books, that is your stock and bond account also?

A. Yes, stock and securities. [793]

When the bank closed its doors this stock of the Building Company was listed as an asset and has been carried by the receiver since then, as an asset of the bank. The first I heard of the plan to build this building was in 1919, in the spring of 1919. I do not know who I heard it from. I understood that [794] the Metropolitan Insurance Company would not make any advance on the mortgage until the building was completed. I understood that it was the understanding at first that the mortgage could not be used for an intermediary loan, and then I know negotiations were on with the Metropolitan later to get an advance on the mortgage, and then later on Mr. Larson or some one tried to get them to advance the money toward the intermediary

(Testimony of M. M. Ogden.)

work. I know Mr. Larson went east and came back with the assignment.

“Q. Was he authorized by any board meeting to go east and get this assignment to your knowledge?

A. No records I know of in the board meeting records about this trip.”

The bank records show no payment to Mr. Simpson or the insurance company of possible advances to the building company.

The six sheets constituting Exhibit 188 contain all of the transactions in connection with the advances from the bank to the building company. They make a set altogether and none of them hold any recital of collateral except the one of November 9.

### **Exhibit No. 188.**

(Flick.)

Number 233. Real Estate Loans. Amount \$9133.25. Date Rec'd, 12/31/20. Time, Demand. Date Check, 12/31/20. Int. Rate, None. Due, Demand. Makers or Payees, Scandinavian-American Building Company (check).

Notation on the Back thereof:

This note represents the carrying as real estate loan #233 the check #1190 of the Scandinavian-American Building Company dated Dec. 31, 1920, payable to the Scandinavian-American Bank for \$9,133.25 signed by J. V. Sheldon, Sec'y-Treas., upon which voucher check is the following memo:

Interest on Capital Stock of Scandina- vian-American Building Company 6% on \$200,000 from June 25, 1920 (Date of entry) to Dec. 31, 1920 . . . .	\$6,300.00
Interest on Drury Lot—6% on \$65,000 from September 25, 1920, to Dec. 31, 1920 . . . . .	1,083.25
Interest on Banking House Investment 6% [795] on \$350,000.00 from — to Dec. 31, 1920 . . . . .	1,750.00
	<hr/>
	\$9,133.25

Attached thereto and written on a letter-head of the Scandinavian-American Bank:

“Enter this voucher up as real estate loan and hold until advance is secured on mortgage, then charge same to the account of the Scandinavian-American Building Company.

(Signed) O. S. LARSON,  
President.”

No. 50335. Notes and Discounts	Part Pts.	Int. Payts.
Amt. \$15000. Date Rec'd 12/8/19	Date. Amt.	Date. Amt.
Time 90. Date Note 12/8/19	2/3./20 \$15,000	2/3/20 \$167.50
Int. Rate 6 Due 3/7/20		

Scandinavian Am. Bk. Bldg. Co.,  
Chas. Drury, President.

Memo of Collateral Securities (over) Back.

Opinion of title by Williamson, Williamson & Freeman on Lot 10 Block 1003 Map of New Tacoma.

Release of Mortgage Geo. B. Kandle to John McPhee, Mortgage dated 1/26/16, Page 501, Vol. 197, Pierce County Records.

Warranty Deed from Drury the Tailor, Inc.

## (Testimony of M. M. Ogden.)

		No. 52076.	Part Payments		Int. on Payts.
Amt.	25,000	Date Recd.	Apr. 14, 20	Date Amt.	Date to Amt. 6%
Time D.		Date Note	4/10/20	6/25/20	\$25,000 6/25/20 \$316.67
		Date D.		Date Paid, June 25, 1920.	

Maker or Payers:

Scand. Am. Bldg. Co.

Chas. Drury, Pres.

J. V. Sheldon, Sec.

		No. 52652.	Part Payts.		Int. Payts.	Date Pd.
Amt.	\$25,000	Date Recd.	Date	Amt.	Date	Amt. 6%
		5/21/20	6/25/20	\$25,000	6/25/20	\$145.83
				6/25/20	to 6/25/20	

Maker:

Scandinavian American Building Company.

Charles Drury, President.

J. V. Sheldon, Secretary.

		No. 54920	Part Payts.		Int. Payts.	Date Pd.
Amt.	\$100,000	Date Recd.	Date	Amt.	Date to Amt.	
Time 4 Mo.		11/8/20	Dec. 9/20	\$100,000	12/9/20	\$516.66
				12/9/20	12/9/20	

Int. Rate 6% Due 3/8/21

Maker:

Scandinavian American Building Company,

Charles Drury, President.

J. V. Sheldon, Secretary.

[796]

		No 54921.	Part Payts.		Int. Payts.	Date Pd.
Amt.	\$50,000	Date Recd.	Date	Amt.	Date to Amt.	
Time 4 Mo.		11/8/20	12/9/20	\$50,000	Dec. 9/20	\$258.33
		Date Note				
		4/8/20		12/9/20	to 12/9/20	

Maker:

Scandinavian American Building Company.

Charles Drury, President,

J. V. Sheldon, Secretary.

Sheet No. 233 of Exhibit No. 188 is a record of a loan December 31, 1920, amounting to \$9,133.35, to the Scandinavian-American Building Company. The writing on the back of this sheet No. 233 probably will explain the purpose of that loan. This was to pay the interest on all the advances. It includes an interest charge against the building company for that \$200,000, paid for the capital stock of the Building Company, Exhibit 187 under date of December 9, 1920, in the amount of \$200,000,



(Testimony of M. M. Ogden.)

with endorsement showing collateral in the bank, took up the two outstanding loans of \$100,000 and \$50,000 Nos. 54920 and 54921 of Exhibit #188. I do not know anything about the reason for taking over the assignment from Simpson.

Redirect Examination.

(By Mr. FLICK.)

At the time the bank received the check for \$9,133.35 it did not give back to the building company the certificates for the stock of the building company.

Cross-examination.

(By Mr. STILES.)

The bank records show that at a certain time it acquired these 2000 shares of stock, and all the time and up until now the bank or the Commissioner of Banking has had the stock of the certificates representing it in its or his possession, and they have been listed as an asset by the Bank Commissioner. I explained the fact that the bank, while the owner of that \$200,000 capital stock, was charging interest on \$200,000. Under the circumstances I see [797] them now that the bank advanced that much money to the building company and naturally was entitled to interest on the investment. The bank record shows that the bank at one time bought the stock and later shows that the bank charged interest on the money it bought the stock with.

Redirect Examination.

(By Mr. FLICK.)

The receiver is still carrying the stock as an asset.

(Testimony of M. M. Ogden.)

The loan sheets show but one item of \$200,000 an increase of pre-existing loans, which has nothing to do with the \$200,000 stock loan which shows on the ledger under stocks and other securities.

Redirect Examination.

(By Mr. FLICK.)

There is no \$200,000 note in connection with the stock transaction. I have made diligent search through the records which would naturally disclose it. I never had any idea that there was such a note and never understood that there was any note for the purchase money of the stock. The notation on the back of the slip to the effect that the \$9,133 represented interest on the \$200,000 stock transaction is a typewritten memorandum probably caused to be placed there by Mr. Larson.

**Exhibit No. 190.**

(Flick.)

Tacoma, Wash., June 25, 1920.

GENERAL.

DEBIT.

Account No. 13—STOCKS AND SECURITIES.

Payment in full stock subscription Scan-

dinavian-American Building Co. . . 200,000.00

CONTRA: Credit Scandinavian-American Building Company.

O. K.—O. S. LARSON.

(Rubber stamp)

P June 25 1920 4 [798]

(Ordinary Deposit Slip.)

Deposited by

SCANDINAVIAN-AMERICAN BUILDING CO.

with

SCANDINAVIAN-AMERICAN BANK

OF TACOMA,

Tacoma, Wash., June 25, 1920.

Specify Banks on which checks are drawn and list  
separately.

GOLD ..... \$. ....

SILVER ..... ..

CURRENCY ..... ..

CHECKS ..... 200,000.00 ....

Payment in full..... ..

Capital stock..... ..

Scand.-American Building Co. ....

(Rubber stamp)

P June 15 1920 4 [799]

**Testimony of O. S. Larson, for Tacoma Millwork  
Supply Company.**

O. S. LARSON, a witness called and sworn on  
behalf of the Tacoma Millwork Supply Company,  
testified as follows:

Direct Examination.

(By Mr. FLICK.)

I was vice-president of the bank from the 25th  
day of January, 1917, until the 17th day of Jan-  
uary, 1920, and then I was elected president and  
remained as president until the bank was taken  
over for liquidation. During the years 1919 and

(Testimony of O. S. Larson.)

1920, after its inception, I do not believe I had any direct relation with the building Company. I was one of the directors, I believe. In reference to the arrangements for a Simpson loan of \$600,000, it is correct that I and Mr. Drury made arrangements for the loan with Mr. Simpson. There was a definite, concrete, complete contract with the Metropolitan Life Insurance Company of New York, and to the best of my knowledge and belief it is still in existence. The proposition of this building was conceived in June, 1919. Mr. Chilberg and I went to New York on the 27th of June, that year, for the purpose of getting a larger mortgage loan for the construction of this building, and improvement of this property, and we came in contact with Mr. Simpson. As I remember the correspondence with the Metropolitan Life Insurance Company, the Treasurer and Comptroller of the Company delivered to Mr. Drury and myself a letter, in New York, on the 19th day of September (paper handed witness). That is the letter I have reference to, dates Sept. 19th, 1919, signed by Mr. Stabler in person. I did not reply to it at that time. I was told that they had to go to the Tacoma Real Estate board to make an appraisal of that property and that was done. The latter part of the Exhibit 192 was afterwards waived. Exhibit 193, is the letter I referred to.

[800]

**Defendant's Exhibit No. 193.**

(Flick.)

**METROPOLITAN LIFE INSURANCE COMPANY.**

New York City, Sept. 19, 1919.

Mr. O. S. Larson, Vice-president,  
Scandinavian-American Bank,  
Tacoma, Washington.

Dear Sir:

Referring to application for loan made by the Scandinavian-American Building Company of Tacoma, Wash., on property at the northeast corner of Pacific and 11th Streets, your city, the plot being 75' on Pacific Street by 120' on 11th Street, running to an alley.

We believe it is proposed to erect on this property a 16-story and basement with pent house, banking and office building to be erected according to plans and specifications still to be submitted to and approved by us.

Subject to satisfactory confirmation of your value of the ground and the cost of the building, we will recommend to our Real Estate Committee a loan on this property of \$650,000 at 6% interest to run for 15 years from November 1, 1920. Beginning with Nov. 1, 1921, \$10,000 is to be paid on account of the principal sum of the mortgage and the same amount every interest date thereafter. Interest dates are to be May and November first. It is understood that the advance is not to be made until the building is entirely completed according



to approved plans and specifications and certificate to that effect issued by our Architect, and our counsel can certify that the building has been or will be fully paid for at the time our advance is made. In case the loan is made we will require that our Architect, Mr. D. E. Waid be paid a fee of one-half of 1% for his services for the examination of plans and specifications, examination of the building during its erection and certifying to us when it has been entirely completed. In addition, Mr. Waid is to be paid his necessary hotel and traveling expenses.

In case it is necessary for us to pay for an appraisal of the ground, the cost of such appraisal is to be paid by your company.

We must ask you to send us at the earliest possible moment a full set of plans and specifications including framing plans, and we will have our Architect examine them as soon as possible.

We will also arrange for the appraisal of the land and as soon as we have reached a definite conclusion will inform you and have you sign the application.

We are to receive the collateral bonds of Messrs. Charles Drury, J. R. Thompson, George G. Williamson, J. E. Chilberg, Gustav Lindberg, and Jafet Lindeberg, jointly and severally guaranteeing that this loan will be reduced to \$500,000.

Yours truly,

WALTER STABLER,

Comptroller. [801]

(Testimony of O. S. Larson.)

I was told that a loan of that size would have to have the approval of the board of directors, over half a million dollars. I was informed that by Mr. Stabler, who is in charge of all their investments. I later received a two-page communication from Mr. Stabler in writing, and a notice from his attorneys in Seattle that the loan had been passed. The letter referred to is exhibit 177, dated November 7th, 1919. I received a telegram dated November 4th, just before I left for Washington, and this letter I found on my desk Christmas eve when I returned to Tacoma on December 24th, said telegram is Exhibit 194.

**Exhibit No. 194.**

(Flick.)

E112PO 35 NL. 1919 Nov. 4 AM 11 35.

MS New York NY 4,  
Scandinavian-American Bank,  
Tacoma, Wash.

Real Estate Committee authorized loan Six Hundred Thousand for erection office building northeast corner Pacific and Eleventh Streets subject to approval title by our counsel and to approval plans and specifications by our Architect writing.

**WALTER STABLER.**

Judge Frank Bausman called me up over the phone from Seattle and said he had received authorization for this loan and wanted me to call, the letter being dated November 12. I may say for the benefit of all that is the only form of author-

(Testimony of O. S. Larson.)

ization that the Metropolitan Life Insurance Company ever issued for any loan that they make. There was never any change made in this Exhibit 177, the authorization of November 7th, 1919, in any written form. I had one conversation with Mr. Stabler in New York, I think it was on the 5th day of April, 1920, in regard to that bond proposition when he agreed to eliminate that feature of it. When we took over this mortgage from Simpson the insurance company had advanced no money on it and at that [802] time I was still a member of the building company as director and was still an officer in the bank as trustee.

Cross-examination.

(By Mr. STILES.)

This enterprise of constructing a building was started in June, 1919. Mr. Drury and Mr. Lindberg and I talked it over with Mr. Chilberg. We were considering whether to improve this property or whether to spend \$150,000 and fix up the old building. At that time the bank owned lots 11 and 12 on which there was thirty year old six story frame building with a brick veneer on the outside. I believe the bank bought that property in 1910, and it was there the bank business was carried on. By 1919 the bank had outgrown these quarters and the question of providing more ample quarters for the bank was gone into. Mr. Chilberg and I went east the first time in July.

It was the bank that was contemplating the erection of the building.

(Testimony of O. S. Larson.)

Well, I should say that the bank and its business were the people that were the controlling interest in putting it in. The organization of the building company was for the purpose of limiting liability. We went on and employed Mr. Webber to prepare plans for this building.

Beginning in 1919 Mr. Simpson has secured a contract, and the contract is in the files of the Receiver to-day, from the Great Bond House of S. W. Strauss and Company, for a loan of \$900,000 on this property. They would have paid the money over here in the National Bank of Tacoma, and we would have been permitted to check it out on the estimate of the architect, as the building progressed. Mr. Strauss and his chief counsel called at our hotel and left the contract for Mr. Williamson to examine. Mr. Drury, Mr. Thompson, and Mr. Williamson overruled my motions to take that money. I wanted to take it. Their objection to it was that it carried a ten per cent commission, [803] so that on a \$900,000 loan we would get \$810,000. This was in September, 1919. That proposition was dropped and then we went to the Metropolitan Life Insurance Company and got that letter.

When we came home we thought we had the building proposition in shape to proceed. We had secured Mr. Webber to draft the plans and had the plans for the bank building. Then some time in October or November Articles of Incorporation of the Scandinavian-American Building

(Testimony of O. S. Larson.)

Company were executed. The purpose of the organization of the corporation was to construct the building we had planned for. When Mr. Webber came here with me he and I drove to Olympia and had a talk with the Bank Commissioner of the state, I detailed to him in a general way what the proposition was and he suggested we fix up a corporation in order to limit liability for damage suits, bills and other things on that building. The trustees of the new corporation were all directors of the bank. The idea was that the bank by having its own directors, trustees or directors of the building company, it would control the building company. The legal department of the bank attended to the filing of these Articles of Incorporation in Olympia. The legal department did the work of the bank and the work of preparing of this organization of the building corporation and I presume they paid the corporation fee. I don't think there was any question but what the bank ultimately paid them. Mr. Moore, the Bank Commissioner, suggested the formation of the separate corporation to build the building. That is my signature to the stock subscription of the building company, I subscribed for that stock on behalf of the bank. Those certificates marked Exhibit #195 are all in Mr. Freeman's handwriting, and are the certificates of stock, issued by the Scandinavian-American Building Company. [804]



**Defendant's Exhibit No. 195.**

**(Stiles.)**

NO. SCANDINAVIAN-AMERICAN Shares  
-ONE- BUILDING COMPANY. 1996

Capital, .....\$200,000.00

Incorporated Under the Laws of Washington.

THIS CERTIFIES THAT O. S. LARSON is the owner of Nineteen hundred Ninety-six Shares of the Capital Stock of Scandinavian-American Building Company transferable only on the Books of the Corporation in person or by Attorney on surrender of this Certificate properly endorsed.

IN WITNESS WHEREOF, the duly authorized officers of this Corporation have hereunto subscribed their names and caused the corporate Seal to be hereto affixed, this 25th day of June, A. D. 1920.

CHAS A. DRURY,

J. V. SHELDON,

President.

Secretary.

(Corporate Seal)

Endorsed in blank.

Similar certificates issued to:

Charles Drury .....One share

Gustaf Lindberg .....One share.

Jafet Lindeberg .....One share

Geo. G. Williamson .....One share

(Testimony of O. S. Larson.)

No. SCANDINAVIAN-AMERICAN Shares  
6 BUILDING COMPANY. 1996.  
Capital, .....\$200,000.00

Incorporated Under the Laws of Washington.

THIS CERTIFIES THAT SCANDINAVIAN-AMERICAN BANK OF TACOMA is the owner of Nineteen Hundred Ninety-six Shares of the Capital Stock of SCANDINAVIAN-AMERICAN BUILDING CO., transferable only on the Books of the Corporation in person or by Attorney on surrender of this Certificate properly endorsed.

IN WITNESS WHEREOF, the duly authorized officers of this Corporation have hereunto subscribed their names and caused the corporate Seal to be hereto affixed this 25th day of June, A. D. 1920.

CHARLES DRURY,  
President.

J. V. SHELDON,  
Secretary.

(Corporate Seal) [805]

This is the certificate I endorsed. These certificates were issued at that time. I never saw the certificate issued to the bank on June 25, 1920, before. It seems to me there was some discussion in December between Mr. Freeman and Mr. Drury about the fact that the certificate had never been issued to the bank. When I got my certificate I immediately endorsed it to the bank. Freeman was a member of the firm of Williamson, Williamson & Freeman, and the bank's legal ad-

(Testimony of O. S. Larson.)

visor and counsellor for all the years I was here. I don't know what the other gentlemen whose certificates are for one share each did with them.

They were endorsed and were in the bank.

Direct Examination (Continued).

(By Mr. FLICK.)

When the \$600,000 mortgage was arranged for it was understood that would take up the \$70,000 Benn Mutual Mortgage. I went east to pay that Penn Mutual mortgage myself, but I did not pay the mortgage at the time, and paid the interest constantly all the time on that mortgage. I was in Philadelphia on the 29th of September, 1920, to pay that \$70,000 and Mr. Simpson went over to see those people, and I told Mr. Johnson, the president and Mr. Steele, the assistant to the President, and Mr. Homer the Treasurer of the Penn Mutual Life Insurance Company that we needed the money until we could get the money from the Metropolitan Life Insurance Company, and he told me to take the check and send it back to Tacoma, which I did. When I went to Philadelphia I believe, the draft for \$70,000 had been mailed ahead of me to Mr. G. Wallace Simpson in Pennsylvania to pay the old mortgage on the bank property at 11th and Pacific. The Scandinavian-American Bank did not carry an account with the Penn Mutual Insurance Company, but they made various payments to the company. The books of the bank show payments made by the

(Testimony of O. S. Larson.)

Scandinavian-American Bank to the Penn Mutual  
[806] Insurance Company on this mortgage.

Cross-examination.

(By Mr. LANGHORNE.)

This \$70,000 Penn Mutual mortgage I understood to be the bank's obligation. The bank got the money on that original mortgage and I made other payments on it. I told Mr. Moore, who was then Bank Commissioner, the plans we had in the making for the improvement of this property, of the necessity of fixing up the old dilapidated bank building that was there. That our directors thought it best to improve this property with a first-class bank and office structure and during the construction of this building and after it was completed it would be necessary to use some of the bank's funds for that purpose. I believe I told him at that time I had been told in New York that twenty-five per cent of the total cost of the building would probably finish it to a point where the building mortgage could be used to finish out the mortgage. At that time I had, or supposed I had, an arrangement made for the \$600,000. Mr. Moore told me that the law gave us permission to use thirty per cent of our capital and surplus, and if we had to go beyond that amount we would have to get the permission of the Bank Commissioner. I told him we had arranged to increase the capital surplus to \$1,260,000. He told me the law gave us the right to use 10% of our capital and surplus—at that time

(Testimony of O. S. Larson.)

we had arranged to increase the capital and surplus to \$1,200,000.00. This increase was voted on in July, 1919, and filed in the Spring of 1920. The original estimated cost of the building was \$860,000. Afterwards it was increased to \$1,100,000.00 and then reduced to \$40,000. or \$50,000.00 on the marble estimate alone. The difference between the \$600,000 and the cost was to be made up of second mortgage bonds, the Seattle bank had agreed to take \$150,000.00 of these, this bank was to carry the balance, until they could be worked out from the earnings of the building. It is not true that the Scandinavian-American Bank advanced [807] \$400,000 on the strength of this \$600,000 mortgage and assignment, when this money was advanced there was no thought that the bank would claim under this \$600,000 mortgage. The whole proposition was discussed at the board meeting of December 10th. I believe the original mortgage was \$125,000 or \$130,000. I know it was considerably in excess of \$70,000 at the time I came here. Then there were principal payments due on the first day of every September, and those were made either here at Havelock Boyles or we mailed a draft to Philadelphia. That was on the mortgage given by Chilberg and wife, and the bank also made payments of interest due under that mortgage. When I got to Philadelphia, in September, 1920, I did not succeed in raising any money on this \$600,000 given Simpson by the bank building company. I saw the officers of the Penn Mutual In-



(Testimony of O. S. Larson.)

insurance Company, and they consented to an extension of the Chilberg mortgage for about four months, and I returned the draft to the Scandinavian-American Bank of Tacoma. It was a check, a cashier's check of the Scandinavian-American Bank. While I was in the city of Chicago, I obtained an assignment of the \$600,000 mortgage to the bank under the advice of attorneys because Simpson was sick. At the time I commenced the construction of this building and at the time I commenced paying bills, I fully expected to get the money under the Simpson mortgage. As to why I had Simpson make the assignment of the mortgage to the bank; I went to our attorneys in Chicago, and they told me the situation regarding that mortgage and told me to get Simpson over there and they would make an assignment of the mortgage. Mr. Simpson was not in the very best of health and I did not want to get the mortgage tangled up in his estate, and my attorney Albert Fink advised me to get the mortgage. Neither the bank nor I paid Mr. Simpson anything for that assignment. The mortgage was in Mr. Simpson's possession in Philadelphia and was drafted in the name of the Metropolitan Life Insurance Company of New York and we had expected that [808] when the construction of the building was undertaken, to finish it in eight months, and that from \$250,000 to \$350,000 would put it through all complete without a lot of unpaid bills against it; so that we would have had it com-

(Testimony of O. S. Larson.)

pleted and the architect of the insurance company would have been here to approve it and we would have gotten the \$600,000. When we ran into this delay and all that trouble came the mortgage was sent to Philadelphia and Mr. Simpson put it in the Prudential Insurance Company to get a temporary loan of \$400,000 on it to go to pay bills that we had never expected to pay until the building was finished. That was the reason we bought the mortgage in, and that was the reason the mortgage was in Philadelphia, and Mr. Simpson's name was inserted in that new mortgage for that purpose. [809]

Cross-examination.

(By Mr. HOLT.)

In reference to the Chilberg Penn Mutual mortgage of \$70,000, the bank was to pay that mortgage. Then the building company was to pay \$350,000 on the property and the bank was to pay the mortgage that was on it and release it therefrom. The mortgage was due and called and as I told you yesterday they only extended it as a personal favor to me. [810]

Direct Examination (Continued).

(By Mr. FLICK.)

In reference to the \$600,000 mortgage, all the directors knew that we could not get the money until their architects would certify that we could complete it or it was completed.

Q. In other words, the bank directors all knew

(Testimony of O. S. Larson.)

that this fund was to be used for the final completion.

A. I suppose they are all going to deny it now, but they certainly knew it then. When we took this assignment from Mr. Simpson we did not give him any commitment that the bank would see to the payment of that \$600,000. He knew we would assign it to the Metropolitan Life Insurance Company. He assigned it to us with that full understanding. I have told you that the payee was changed at the request of the attorneys for the insurance company, and then we have a declaration of trust that was read in evidence here yesterday, from Simpson-Oldham (attorney for the insurance company) dictated that trust and Simpson had the mortgage in his safe in Philadelphia. I had been to Newark, New Jersey and asked Mr. Walker to give us six month's extension on this security, and Mr. Walker said they had need of the money, and Mr. Simpson came with me to Chicago and I went to Attorney Fink's office and explained the nature of this proposition. Mr. Fink told me that the word "trustee-in-law" had gotten more people in trouble than anything else, and to make a clean cut deal of it, Mr. Simpson should make an assignment to the bank for all interested parties. [811]

Cross-examination.

(By Mr. OAKLEY.)

As to why we did not carry this \$600,000 as an asset of the Scandinavian-American Bank in the bank records and publish it in our written statement

(Testimony of O. S. Larson.)

through the papers; as required by law, it was not an obligation of the Scandinavian-American Bank of Tacoma, and never was at any stage of the game and I was not required to put it in the bank's statement. I did not carry it as an asset of the bank in our published statement, not to my knowledge. The Scandinavian-American Bank was never paid \$415,000 for the property that was deeded to the Scandinavian-American Building Company. As to whether or not I was directed by the trustees of the Scandinavian-American Bank to obtain an assignment, to have Simpson reassign this mortgage to the bank for the purpose of securing the bank for the money already advanced and the money that we have been putting up, I will say I never got any such instructions from anybody. There never was on or about the day of this assignment of this mortgage a note executed by the Scandinavian-American Building Company for \$363,000 approximately to represent the interest on that \$350,000 from February 10th, up until the date of the assignment, that is absolutely untrue.

Witness refused to answer questions as to how the matter of the \$600,000 mortgage and the purchase price agreement for the lots were carried on the bank books upon the ground that they might incriminate him.

I had been writing letters at various and frequent intervals and sending telegrams to Mr. Simpson requesting him to use the \$600,000 mortgage for the purpose of securing a temporary loan for the con-

(Testimony of O. S. Larson.)

struction of this building. During the summer months of 1919 I had up a proposition with Mr. G. Wallace Simpson with reference to obtaining a \$900,000 loan for the construction of this office building. I received [812] telegram Exhibit 199, in the city of Tacoma, on August 5, 1919, and this is a copy of a letter I wrote to Simpson on August 29th, 1919. That was in reference to the Strauss loan.

**Receiver's Exhibit No. 199.**

August 29, 1919.

Mr. G. Wallace Simpson,  
Medical Arts Building,  
Philadelphia, Pa.

Dear Mr. Simpson:

After receiving your lengthy telegram of August 24th, I called a number of my associates together and we went to Seattle where we had a long conference with Mr. Chilberg lasting the greater part of the evening. After leaving Mr. Chilberg's apartment, I telegraphed you as follows:

“Think it important that you come here at once. Other attractive propositions pending. Directors not a unit. Chilberg trying to help you. I expect to leave here for New York on September sixth. This matter should be settled before I leave. Think with you on ground that satisfactory solution could be reached. Can you come here immediately so matter can be settled before I leave here on sixth? Larson?”



On the 25th we received your telegram of the 24th reading as follows:

“Have accepted loan on following terms and conditions Stop Nine Hundred Thousand interest six per cent dated October first nineteen nineteen, matures October first nineteen twenty nine discount ten per cent Stop Fifty Thousand to be paid each year beginning at end of second year Stop Bank or Directors to agree to retire one hundred thousand bonds of last maturity within four years from date of loan at once hundred and two Stop Satisfactory guarantee of completion to be given Stop Bonds to be signed by Realty Company Stop Improvements will be fifteen-story steel frame office building of highest type Stop Estimated rental one hundred and seventy five thousand operating expense and taxes fifty-five thousand Stop Bank to furnish safety deposit vault and fixtures Stop Frederick Webber architect Stop As you will see I have increased loan One Hundred Thousand Stop If this is satisfactory wire authority to sign application as lenders will accept my signature for Realty Company.”

We have had this telegram under consideration for several days and now beg to confirm to you the following telegram which we have just dispatched:

“Referring your telegram August Twenty-seventh, three members of our Board offer serious objections to your terms claiming discount should be reduced in substantial amount and sinking fund also reduced to Twenty-five Thousand a year. Are you certain building proposed by Webber will produce One Hundred Seventy-five Thousand gross

rentals based upon One Dollar Seventy-five to Two Dollars per square foot. Have you any suggestions to offer? We all [813] recognize importance of speedy action but do not believe deal can be finally consummated until further conference with you in New York on date suggested by you. Can you hold final action in abeyance until that time?"

As stated in this telegram, three members of our Board of Directors are offering very serious objection to the large loan of \$900,000.00 unless the equity which the bank would own in the property could be sold outright to the building corporation, so that finally the only interest the bank would have in the property would be a lease on the banking room and the basement for say a period of twenty-five years at an increased rental every five years if desired.

We, of course, do not know on what basis you arrived at a yearly rental of \$175,000.00, and if these figures were arrived at on what we talked over in New York, it is certainly very encouraging. I have found out that there will be no trouble to rent this building on a basis of from \$1.75 to \$1.90 a square foot. Except for the amount of taxes to be paid on the new property, with the building constructed, we believe that the amount of \$55,000.00 covering both this item and operating expenses is about right.

The loan you suggested in one of your telegrams from the Metropolitan Life Insurance Company is by far the cheapest proposition, and this fact has gotten into the upper-story of some of these Directors. In addition to that, there is the St. Louis crowd, who had started to work on it without my

knowledge while I was in the east. Behind them is the Black Masonry & Contracting Company of St. Louis and Berlin, Swern & Randall, architects, No. 19, South LaSalle Street, Chicago, Illinois. The St. Louis outfit is offering a loan of \$600,000.00, with discount at 5% with a sinking fund of 5%, the interest rate remaining at 6%.

Mr. Williamson, head of the legal firm in Tacoma associated with us for many years, and also one of our Directors, will go east on the 6 to place his son in school. I have planned to go with him, leaving here a week from to-morrow. Would you be able to hold up these \$900,000.00 people until we could have a chance to discuss the matter with you in Philadelphia and explain all these phases to you. Mr. Williamson, being one of the chief objectors to the terms of the \$900,000 loan, I believe that this matter could be considered by us in Philadelphia and some of the objectionable features adjusted that the matter could be closed promptly while we are there. Personally, I am free to admit that I am in favor of your proposition, and if you can assist me in any method whereby this bank will dispose of this piece of real estate to the building corporation, I am sure we can consummate the deal.

Very sincerely yours,

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Vice-President.

OSL/B. [814]

(Testimony of O. S. Larson.)

154 PO MY 16 O NL

Fy Philadelphia Pa Aug 24 1919.

O S LARSON

Vice Prest Scan Amer Bank Tacoma Wn.

Have accepted loan on following terms and conditions Stop Nine Hundred Thousand interest six per cent dated October first nineteen nineteen matures October first nineteen twenty nine discount ten per cent Stop Fifty Thousand to be paid each year beginning at end of second year Stop Bank or directors to agree to retire One Hundred Thousand of Bonds of last maturity within Four years from date of loan at once Hundred and two Stop Satisfactory guarantee of completion to be given Stop Bonds to be signed by Realty Company Stop Improvements will be Fifteen story steel frame office building of highest type Stop Estimated rental One Hundred and Seventy Five Thousand operating expense and taxes Fifty Five Thousand Stop Bank to furnish safety deposit vault and fixtures Stop Frederick Webber Architect Stop As you will see I have increased loan One Hundred Thousand Stop If this is satisfactory wire authority to sign application as Lenders will accept my signature for Realty Company.

V. WALLACE SIMPSON.

1133P [815]

Q. Isn't it true that the board of trustees of the Scandinavian-American Bank at the time of this letter, Exhibit 199, was written in August 29th, 1919,



(Testimony of O. S. Larson.)

were objections to the bank putting any money in real estate for bank purposes?

Mr. Chilberg was making very serious objections, because he wanted to get out of the real estate business in Tacoma, and Mr. Williamson was objecting on other grounds. These are the only two that I can think of. Said they would not consider this proposition unless the equity which the bank would own in the property should be the leasing of the banking rooms. I remember Mr. Chilberg was very seriously objecting to it, and that is the reason I wanted Mr. Williamson to go to New York and find out what was in this Strauss contract. The proposition of the Scandinavian-American Bank entering into a long term lease with the Scandinavian-American Building Company was considered by the trustees and agreed to I think. That was one of the principal reasons why the board of directors of the Metropolitan Life Insurance Company wanted to make this large loan, knowing it was to be occupied by a bank that had been in existence for seventeen years and would probably stay here seventeen years more. I have no correspondence to show that, but that all took place down there in New York. They don't promise to loan \$600,000 on pure wind. I had not seen Mr. Moore, the bank Commissioner, in August, 1919, I did not see him until October 7th, 1919. I received the letter, Exhibit 202, from Mr. Chilberg.



(Testimony of O. S. Larson.)

**Receiver's Exhibit No. 202.**

August 6, 1919.

Mr. O. S. Larson,

Vice Pres., Scandinavian-American Bank,

Tacoma, Washington.

Dear Mr. Larson: [816]

I have been thinking over your conversation with Moore last night. I don't think I would worry that fellow any more anyway. His head is certainly thicker than mush.

If you get your building financed and need the extra \$150,000, put it on a second mortgage; give us one-half or two-thirds of it here and you carry the balance, and there is no one in the United States to kick unless it would be your stockholders or ours and it is for their interest that we would be doing it.

This would mean on your plan that there would be a first mortgage of \$500,000 on the building, a second mortgage of \$150,000, and the balance of the cost of building and property—\$350,000 or \$400,000—to be carried by capital stock. The second mortgage would be good and there is no reason why we should not handle it in that way if we want to. There is certainly no law to prevent.

Very truly yours,

(Signed) J. E. CHILBERG.

I seem to recollect I met Mr. Moore in Mr. Chilberg's office in Seattle one time, it might have been before that letter was written, I remember Mr. Moore was raising the devil about the Spiketon coal mine at that time. That comes to my mind. I

(Testimony of O. S. Larson.)

do not know what that sentence "I do not think I would worry that fellow any more anyway" refers to. In the face of this letter I state that I had the consent of Mr. Moore to go ahead and put the money of this bank into the bank building, providing we could raise the capital stock. That conversation referred to in Chilberg's letter was before we had any hope of getting any money. I do not know what Chilberg referred to in that letter. I admit without any qualification I received the letter marked Exhibit 203.

**Receiver's Exhibit No. 203.**

Aug. 16, 1919.

Mr. J. E. Chilberg,  
1410 Alaska Building,  
Seattle, Washington,

Dear Mr. Chilberg:

I have been thinking over what you said in your letter of August 6th and the final plans for financing this building. [817]

The proposition as I have made it out is as follows:

Cost of Old building and	
purchase of Drury lot.	\$350,000.00
	60,000.00
	————— \$410,000.00
Cost of bare building, ap-	
proximated .....	790,000.00
	—————
Total amount to be raised ...	\$1,200,000.00

We are safe in assuming that we can get a loan which will net \$712,500.00, leaving \$487,500.00 to be raised on a second mortgage and in capital stock. If the bank in Seattle would agree to take \$100,000.00 of the first serial numbers of second mortgage bonds, it seems to me that the bank here could carry at least \$150,000.00 without any criticism. Some of these bonds could very likely be sold by our bond department and this would leave a very small amount to be raised by capital stock.

I have instructed our attorneys to incorporate immediately a corporation to be known as the Eleventh Street Improvement Company, or some other suitable name. This corporation will purchase the property from the bank and Drury, construct the building and operate it. When we get that far, I will very likely make a proposition to Percy Shanstrom to come over here and take charge of the entire affair leaving my time to develop the bank.

Very sincerely yours,

---

Vice-president.

OSL/B.

I wrote the letter marked Exhibit 204.

**Receiver's Exhibit No. 204.**

August 20, 1919.

Mr. J. E. Chilberg,  
1410 Alaska Building,  
Seattle, Washington,

Dear Mr. Chilberg:

I am pleased to acknowledge receipt of your let-

ter of August 19th wherein you say that you will take a reasonable proportion of the second mortgage on the new bank building in Tacoma.

After conferring with Drury, Thompson and Williamson yesterday, when Simpson had delivered his message to me over the phone, we wired him this morning to accept the loan of \$800,000.00, which will net us \$720,000.00 in cash. Simpson also told me over the telephone that he would arrange a second mortgage bond issue of \$150,000.00. This ought certainly to finance the building properly and let the bank get out of it nearly all of what it now has in the property. The bank building company may not be a success. The bank, [818] however, housed in the building, with that as an advertisement, must be, and will be a success.

Very sincerely yours,

---

Vice-president.

OSL/B.

August 19, 1919.

Mr. O. S. Larson,

Vice Pres., Scandinavian-American Bank.

Tacoma, Washington.

Dear Mr. Larson:

We will arrange to take a reasonable proportion in the second mortgage on the new building in Tacoma. I do not, however, think the total of the first and second mortgages should exceed 75% of the value of the ground and building. If it does we probably would be criticized. In New York they go as high as 80% but Seattle and Tacoma securities

(Testimony of O. S. Larson.)

are not considered as reliable as New York. Therefore, I think you better figure about that way and let stock be placed covering the difference.

Yours very truly,

(Signed) J. E. CHILBERG.

That letter from Chilberg says that we ought to be able to finance the building proper and let the bank get out of it nearly all that it has in the property, that is exactly what it says. That was the intention. Just what letter says. I received the telegram marked Exhibit 205.

**Receiver's Exhibit No. 205.**

MW. New York, NY. Oct. 15, 1919.

O. B. Larson

Scandinavian American Bank Tacoma Wash.

Appraisals of land and value of building so far as we can figure will not permit loan over Six Hundred Thousand Stop If this is satisfactory please wire day message and we will endeavor to have loan authorized at meeting of committee expected for Friday morning.

WALTER STABLER,

Comptroller Metropolitan Life Ins. Co. [819]

We were trying to get a loan from the Metropolitan at that time. I received the letter from Bausman & Oldham marked Exhibit 206.



**Receiver's Exhibit No. 206.**

Seattle, Washington, November 12, 1919.

Scandinavian-American Building Company,  
c/o Scandinavian-American Bank,  
Tacoma, Wash.

Gentlemen:

We have received from the Metropolitan Life Insurance Company authorization of a \$600,000 loan to be made to your company on the property at the Northeast corner of Pacific and Eleventh Street.

We would be glad to talk over the details of this loan with you at your earliest convenience.

Very truly yours,  
BAUSMAN & OLDHAM.  
(Signed) By OLDHAM.

R.

I wrote Exhibit 207 in reply to that.

**Receiver's Exhibit No. 207.**

Nov. 13, 1919.

Hon. Robert P. Oldham,  
Hoge Building,  
Seattle, Washington.

Dear Mr. Oldham:

This is to acknowledge receipt of your letter of November 12th regarding authorization received by you of a loan of \$600,000.00 to be made to the Scandinavian-American Building Company on the property at the Northeast corner of Pacific Avenue and Eleventh Street in Tacoma. I shall be very glad to

take this matter up with you at your earliest convenience and to get all the necessary papers into your hands as speedily as possible. [820]

The company will purchase 50 feet from the Scandinavian-American Bank and 25 feet adjoining on Pacific Avenue from Mr. Charles Drury.

There seems to have been some mistake made in the appraisal of this real estate which the company had made in fixing the value I believe at Two Hundred Sixty odd thousand dollars. I am quite sure that I could sell it before to-morrow morning for \$400,000. Mr. C. Wallace Simpson of Philadelphia, who was instrumental in introducing us to the Metropolitan Life Insurance Company with the application, is in the city now and I would like to bring him over with me when we get ready to discuss the details of the loan. I am quite sure that we will get along very satisfactorily.

Very sincerely yours,

---

Vice-president.

OSL: B.

I received the telegram marked Exhibit 208.

**Receiver's Exhibit No. 208.**

FY Philadelphia Pa Oct 25-19.

O S Larson

Scand Amn Bank Tacoma Wash

Have meeting with Stabler Tuesday at which time loan will be passed by Committee Stop My business finished here Mrs Simpson sick hope she

will be well enough so we can leave here Thursday  
Best regards to all Am anxious to be on my way.

G. WALLACE SIMPSON.

The Metropolitan Life required an appraisal to be made by the real estate board of Tacoma. That telegram, Exhibit 209, I saw, the mortgagor had to pay the fee of the board for appraising the property. I was in Chicago when Exhibit 209 was sent, Ogden showed it to me after I got home.

**Receiver's Exhibit No. 209.**

October 18, 1919.

Mr. Walter Stabler, Comptroller,  
Metropolitan Life Insurance Co.,  
Metropolitan Building, New York City.

[821]

Dear Sir:

Enclosed herewith please find confirmation of telegram sent you in reply to your telegram of November 15. I have nothing to add to what I have already said about the valuations, except that Mr. Webber, the architect and a large property owner and experienced builder of many years standing, from Philadelphia, has just been here and thoroughly investigated the entire matter. He is of the opinion that taking into consideration the value and location of the land, the great necessity for and the nature of the improvement, backed in by large and prosperous city and community, a loan of \$650,000.00 on the property is considered very small. However, we will be able to get along very nicely with \$600,000.00 on the terms heretofore agreed

upon between us. Nevertheless, in view of the fact that the money is not to be advanced for several months, we would like to submit to you additional information and evidence as to the value of this bank building property when finally completed, and we are satisfied that you will come to the conclusion that the original amount of \$650,000.00 is not excessive, but is a first-class loan in every particular, and that you will then agree to authorize the full amount of \$650,000.00.

With kindest personal regards,

Very sincerely yours,

---

Vice-president.

OSL/B.

Tacoma, Wn., Oct. 16, 1919.

Walter Stabler, Comptroller,

Metropolitan Life Insurance Co.,

Metropolitan Building, New York City,  
N. Y.

Referring your telegram Fifteenth we will accept Six Hundred Thousand but request permission submitting to you additional evidence that loan of Six Hundred Fifty Thousand is not excessive considering location, value of land, value of proposed improvement and solid prosperous condition of community behind it. Frederick Webber four hundred three Morris Building, Philadelphia, architect, now here completing plans which will be submitted to your architects forthwith. G. Wallace Simpson arriving here October twenty-seventh. Complete additional information will be furnished not later than

November Tenth. In meantime we will accept authorization Six Hundred Thousand according to terms heretofore agreed upon.

OLE S. LARSON,  
Vice-president.

Charge: Scand. Am. Bank. [822]

Oct. 14, 1919.

Mr. Walter Stabler, Comptroller,  
Metropolitan Life Insurance Co.,  
New York City, N. Y.

Dear Mr. Stabler:

I returned from New York and the east last Saturday and now beg to confirm receiving from you the following telegram:

“Cost of appraisal by our appraisers one hundred fifty dollars Stop This fee must be paid by you. If satisfactory please telegraph your approval.”

To which our Mr. Ogden replied as follows:

“Will pay bill for appraisal when authorized by you.”

We hope that the appraisal will be satisfactory in very detail and upon receipt of the bill we shall be very much pleased to remit the amount due in New York exchange.

Referring further to your letter of September 19th, I wish to advise you that upon receipt of this letter we immediately employed Mr. Frederick Webber, 403 Morris Building, Philadelphia, to prepare the necessary plans and specifications covering the bank and office building structure referred to in your letter of September 19th. Mr. Webber is now



in Tacoma and expects to return to Philadelphia some time next week leaving here Friday night. When leaving here, he will be thoroughly familiar with the cost of material, labor conditions and every other detail in connection with the construction of this building. Minor matters in regard to the plans will be adjusted during the next few days, and I am of the opinion that the plans will be ready to submit to your architect, Mr. D. E. Waid, in the course of the next two or three weeks, and I am quite sure that he will find everything satisfactory.

Mr. G. Wallace Simpson was to have accompanied the writer west last week, but owing to some unfinished business, was delayed in Philadelphia for several days.

With the kindest personal regards, I am,  
Very respectfully yours,

---

Vice-president.

OSL/B. [823]

POSTAL TELEGRAM.

Tacoma, Wash., Oct. 2d, 1919.

Mr. Walter Stabler,

Comptroller Metropolitan Life Insurance Co.,  
New York, N. Y.

Will pay bill for appraisal when authorized by you.

M. M. OGDEN,  
Cashier Scandinavian-American Bank.

(Testimony of O. S. Larson.)

(Charge)

New York NY Oct 1 1919

Scandinavian American Bank.

Tacoma Wash.

Cost of appraisal by our appraisers one hundred fifty dollars Stop This fee must be paid by you if satisfactory Please telegraph your approval.

WALTER STABLER,

Comptroller Metropolitan Life Ins. Co.

10 PM.

We had to pay the architect his fee, we paid him \$2500.00 this was done on the authorization of this loan. He did not come to Tacoma personally, he sent his assistant, Mr. Bishop, who inspected the building site.

When we began to find out we needed money to build this building, we tried to get money from the Metropolitan Life, did not try any other source that I know of. We agreed that was the cheapest loan in the market, the best and easiest terms to pay back on. I received the letter of June 20th, from the Metropolitan Life Insurance Company. The \$2500 architect's fee was paid by the building company, some time in the spring or summer of 1920. [824] Mr. Bishop analyzed the cement that went into the foundations and checked over every foot of the specifications he was here for two weeks in August, 1920. I got the letter and wrote the reply thereto marked Exhibit 210.

**Receiver's Exhibit No. 210.**

July 7, 1920.

In re: N. E. Corner Pacific and 11th St., Tacoma,  
Washington.

D. Everett Waid, F. A. I. A., Architect,  
No. 1 Madison Avenue,  
New York City.

Dear Mr. Waid:

This is to acknowledge receipt of your letter of July 2d.

I have had this communication copied and forwarded same to Mr. Frederick Webber, 403 Morris Building, Philadelphia, for his consideration in the matter. If I understand your letter correctly, you would like to have added to the building plans and to construct one only out of these three:

1st: A second interior stairway, or

2d: An exterior stairway (iron fire escape; or

3d: Have the doors to all rooms opening into corridors fire-proof.

I wish you would advise me if I am understanding this thing the way you do. Some few weeks ago I happened to run across the fire adjuster for the North Pacific Coast District and I requested him to come to our office and look over the plans for the new building. He expressed the opinion that one fire-proof tower would be sufficient in order to safeguard all persons that might be in the building at any one time.

You realize that the construction of this building

must necessarily take some account of the ultimate cost. The building plans, as they stand, are running fully \$350,000.00 ahead of any estimates which we had made at the time we applied for this loan. It is absolutely necessary to secure this loan in order to complete the building, and we will, of course, go to any reasonable extent in modifying the plans so as to harmonize with the views of the Metropolitan Life Insurance Company.

In a previous letter to Mr. Simpson, I suggested to him that we hold this matter in abeyance until such time as you have been able to get out here personally with Mr. Webber, when we will all be very glad to canvass the situation with you and to decide definitely with all of you present here on the ground what [825] is the best and most expedient thing to do under the circumstances. I think that will be the best thing to do for all concerned.

With the kindest personal regards and hoping to see you out here soon, I beg to remain,

Very sincerely yours,

---

President.

OSL/B.

P. S.—You might communicate with Mr. Frederick Webber, 403 Morris Building, Philadelphia, and learn when he expects to leave for the west. The foundations for the building have all been completed several days ago and the structural stool has begun to arrive.

July 2, 1920.

In re N. E. Cor. Pacific & 11th Streets, Tacoma,  
Washington.

Mr. A. S. Larson,  
Pres. Scandinavian-American Bank,  
Tacoma, Washington.

Dear Sir:

I am in receipt of a letter from Mr. Simpson, transmitting check which accompanied your letter addressed to him under date of June 22d, for which please accept my thanks.

With reference to your expressed opinion that the lender is safeguarded without the additional exit requested, I would say that from my own personal point of view, owners and lenders are under obligation to safeguard life as well as property. Two of the most disastrous fires which occurred in recent years were in fireproof buildings. One of these, known as the Triangle loft building fire, happened in New York City and while there was very little damage to the building itself, there was a very great loss of life.

From the point of view of the lender, in this case, it is a matter of business as well as of humanitarian interest for them to insist upon all reasonable safeguards. It so happens that the Metropolitan Life Insurance Co. carries insurance on one out of every eight persons in the country and any disaster to life, whether an accident on a railroad, an epidemic of influenza, or a fire, is quite sure to involve payment to death claims by that Insurance Company.



(Testimony of O. S. Larson.)

It is a well established principle, recognized by law in some cities including New York, if not Tacoma, that there shall be two means of exit from a building. In your building, since the plans provide only one stairway, I have insisted that a second interior stairway, or at least an exterior stairway, should be provided. The Metropolitan Life Insurance Co., however, have agreed to waive this requirement on the condition that the doors to all rooms, opening into corridors, shall be fireproof. If the doors have already been made, as intimated in your letter, I suggest that [826] the stairway be provided and would be glad to receive a plan from your architect for approval accordingly.

I hope very much that on further consideration you will realize that this requirement is just and reasonable and in the best interest of all concerned.

Very sincerely yours,

(Signed) D. E. WAID.

The architects of the Metropolitan Life Insurance Company discussed with us the details of the construction of the building, we sent them photographs of the building every week and they were getting duplicate reports from Mr. Webber and Mr. Wells. Exhibit 211 is a letter along that line.

**Receiver's Exhibit No. 211.**

July 28, 1920.

In re: Scandinavian-American Bank Bldg., Tacoma,  
Wash.

Mr. O. S. Larson, President,  
Scandinavian-American Bank,  
Tacoma, Washington.

My Dear Mr. Larson:

I have yours of the 21st inst. at hand and will say in reply, that I was in touch with Mr. Webber yesterday, who thinks it better to leave the matter of the corridor doors and the second stair for final discussion and settlement when we meet in Tacoma and have arranged with Mr. Webber, to be there on or about the 10th of August.

Yours very truly,

(Signed) D. E. WAID.

And Exhibit 212 also.

**Receiver's Exhibit No. 212.**

November 10, 1920.

D. Everett Waid, F. A. I. A.

1 Madison Avenue,

New York City, N. Y.

Dear Mr. Waid:

I was just on the point of writing to you when your letter of November 3d came to hand, and yesterday afternoon I had a talk with Mr. Sherman Wells, Superintendent of Construction of the [827] building, who promised me that he would

write you at least once a month as to the progress of the construction.

We are very glad to report to you that the exasperating condition regarding our steel order was finally broken about the 10th of October, practically all the steel arriving at the same time. By the close of the day, I expect that nearly one-half of the entire steel tonnage will be in position and riveting will very likely commence next week.

I think Mr. Webber was very fortunate in securing the services of such a splendid superintendent as Mr. Wells. I presume Mr. Bishop told you that he came from the East where he has had a long and satisfactory experience in New York, Philadelphia, Washington and other cities. I am sure that we could not have been able to get the services of a better man.

I would have written you sooner but I expected that Mr. Webber's office in Philadelphia, who are receiving daily reports, would keep you informed. I should very much appreciate it if you would inform Mr. Stabler that we are out of the woods and on our way with this beautiful building.

When do you expect to come out again for another inspection? Perhaps you will be able to come yourself next time.

Very sincerely yours,

---

President.

OSL/R.

November 3rd, 1920.

In re Pacific & 11th Streets, Tacoma, Wash.  
Mr. O. S. Larson, President,  
Scandinavian-American Bank,  
Tacoma, Washington.

My dear Mr. Larson:

Since Mr. Bishop's return from the West, I have had no report as to the progress of your building—whether you have been fortunate enough to get steel delivered fast enough to keep the work going or whether you are still encountering exasperating delays.

In order that I may keep informed as to the progress of the work, I would appreciate it very much if you or your job superintendent would write me a short report and keep me informed from month to month so that I may be able to notify my clients at any time they wish information regarding the building.

Very truly yours,

(Signed) D. E. WAID. [828]

The following is Exhibit 213.

**Receiver's Exhibit No. 213.**

June 22, 1920.

Mr. G. Wallace Simpson,  
Medical Arts Building,  
Philadelphia, Pa.

Dear Mr. Simpson:

On Saturday we received your telegram of the 17th instructing us to send you check for \$2500, payable to D. Everett Wade, architect for the

Metropolitan Life Insurance Company, to apply upon his expenses and fee in connection with the examination of the building as the work progresses, and enclosed herewith we are handing you check No. 223 for \$2500, made payable according to instructions. You may use your own judgment about delivery of this check to Mr. Wade.

We have gone over the substance of your telegram about eliminating the extra stairway and that the insurance company is now agreeable to do this, but that they insist upon fireproof doors leading into the hall-ways, where the floors are subdivided. We have taken this to mean that they desire all the doors leading into the hallway to be metal doors. In connection with this matter, we also received a telegram from Mr. Webber substantially to the same effect. I have also taken the matter up with some of the fire insurance people and they cannot see where it would in any way improve the security of the Metropolitan Life Insurance Company. They claim that the building would be practically fireproof anyway, whether the stairway or the metal doors were placed in the building, and further that the building would be amply covered by insurance to take care of any loss which the life insurance company might have on the property. I wired Mr. Webber that in our opinion substitution of metal doors is now impossible because the mill bought mahogany for all the woodwork, according to the contract which was let to them, that the work was now in process of manufacture and I doubt if any



change can be made without a great loss to the building company.

I would suggest that this matter be left in abeyance until Mr. Wade arrives here on the ground and give Mr. Webber and ourselves a chance to go over the entire situation with him regarding this matter. It seems to me that the Metropolitan Life Insurance Company would not jeopardize a dollar in making a loan on the building according to the plans and contract now let by Mr. Webber, because the building would be insured for \$600,000.00 more than the loan which they have committed themselves to make. I am confident that some way will be found to get around this new requirement which they have made, and which I think is absolutely unnecessary.

Very sincerely yours,

---

President.

OSL.B

Enc [829]

The following is the continuation of Exhibit 213.

1920 June 17 AM 7 33

FY Philadelphia Pa 16.

O. S. Larson

Scandinavian American Bank Tacoma Wash.

Send me check twenty-five hundred Order D. Everett Wade Architect Metropolitan Life Stop This to cover express Examination as work progresses Stop Have arranged to cut out extra stairway but they will insist upon all doors leading hallway where floors subdivided being fireproof

Stop This change should not amount over one quarter what additional stairway would cost and keeps floors intact for people like Standard Oil Stop Saw Stabler this morning Everything satisfactory.

G. WALLVE CIMPSON. [830]

November 9, 0.

D. Everett Waid, F. A. I. A.,

Architect,

1 Madison Avenue, New York.

Dear Sir:

Your letter of November 3rd, 1920 addressed to Mr. O. S. Larson requesting information as to the progress of our building was handed me today.

We have received seventy cars of structural steel out of seventy-four, which is the complete shipment. We have erected 747 ton in position. We have not yet started riveting, but expect to commence by the 15th of November. All the foundation walls are up to grade. Have all material for centering for floor arches—all terra cotta floor arches ready. We are unloading face terra cotta at the railroad yards. The granite contractor is ready to start setting granite. Have 80% of rough plumbing pipe on the job, and it looks as though we would be able to push construction from now on.

If you so desire, I would be pleased to advise you monthly as to the progress of our work.

Yours very truly,

SCANDINAVIAN AMERICAN BUILD-  
ING CO.

(Signed) By SHERMAN WELLS,  
Superintendent.

SWC.

CC—Mr. LARSON

Mr. WEBBER.

I received the letter marked Exhibit 214.

**Receiver's Exhibit No. 214.**

New York City, June 11, 1920.

Mr. O. S. Larson, Vice-Pres.,  
Scandinavian American Bank,  
Tacoma, Washington.

My dear Mr. Larson:

I am in receipt of yours of the 5th instant and am glad to know that the work of the new bank and office building is progressing. [831]

Your trouble in obtaining steel and other materials exists here, to a very alarming extent and no one knows when they start a building operation when it is likely to be finished. I should judge there is no likelihood of the building being finished by November 1st, but that will make no particular difference to us.

Referring to the bonding of the building. As I told you in the beginning, we would not make any advances on this operation until the building is completed. It is too far away for us to consider

(Testimony of O. S. Larson.)

such a proposition and the bond would not, in our opinion, be of much use to us in case of any trouble. With our commitment and our mortgage of record, I should think that you could arrange to finance the matter with your own funds or those obtained from other sources for temporary use. When the building is finished and our architect has passed it, we will be very glad to make the advance.

I was very much gratified to have the National Bank of Tacoma take over the corner of 12th St. and Pacific Ave., adjoining the National Realty Building, as I believe they intend to erect an attractive banking building there and they have already paid us, I believe, \$100,000 on account of that loan. The restriction on the corner still provides that the building may not be erected more than three or four stories in height.

Yours very truly,  
(Signed) WALTER STABLER,  
Comptroller.

WS/MIR.

In cross-examination this morning I told you that Simpson was endeavoring to get a temporary loan for \$300,000 or \$400,000 because we had not expected that this building would take more than six or seven months at the most to complete, from the time we started to break the ground. I sent Mr. Bean from New York with instructions to Mr. Drury to abandon everything in connection with this building, on account of the general financial conditions in December, 1919, but when I came home Christmas Eve I found Mr. Drury had torn

(Testimony of O. S. Larson.)

the fittings out of this building, and part of the concrete out of it in violation of my instructions. Drury was President of the Building Company. I received Receiver's Exhibit 214. I told you that Simpson was endeavoring to get a temporary loan of \$300,000 or \$400,000 because we had not expected that this building would take more than six or seven months to complete. I sent the telegrams and letters marked Receiver's Exhibits 215, 16, 17 and 18. [832]

**Receiver's Exhibit No. 215.**

NIGHT LETTER

Tacoma, Wash., December 31, 20.

G. Wallace Simpson,

Medical Arts Building, Philadelphia, Pa.

Can you by any possible means get us advance mortgage three or four hundred thousand This will complete building or can you get any definite assurance of million dollar loan referred to your last telegram Happy New Year.

O. S. LARSON.

**Receiver's Exhibit No. 216.**

NIGHT LETTER

Tacoma, Wash., December 16, 20.

G. Wallace Simpson,

Medical Arts Building, Philadelphia, Pa.

Referring your telegram thirteenth strongly suggest you see Stabler and if possible get advance suggested our telegram thirteenth Boyle again press-



(Testimony of O. S. Larson.)

ing Penn Mutual matter Have you seen Hamer  
and what is his final decision Answer.

O. S. LARSON.

**Receiver's Exhibit No. 217.**

NIGHT LETTER

Tacoma, Wash., December 23, 20.

G. Wallace Simpson,

Medical Arts Building, Philadelphia, Pa.

What results with Hamer last Monday and did  
you get anywhere with Stabler on Tuesday We  
should have some relief shortly Seasons Greetings  
to you and Mrs. Simpson. •

O. S. LARSON. [833]

**Receiver's Exhibit No. 218.**

Tacoma, Wash., Jan. 22, 1920.

G. Wallace Simpson,

Medical Arts Building, Philadelphia, Pa.

When are you coming west. Would appreciate  
your assistance framing second mortgage bond is-  
sue bank building. Answer.

O. S. LARSON.

Mr. Hamar referred to in Exhibit 216 was the  
Treasurer of the Penn Mutual Life Insurance  
Company and Boyle is their agent. The proposi-  
tion with Mr. Stabler referred to in the night let-  
ter of December 23d, was to get him to advance  $\frac{1}{3}$   
of the \$600,000 mortgage. I think I had consider-  
able correspondence and telegrams and letters run-  
ning up into January, 1921, just before the bank

(Testimony of O. S. Larson.)

closed with reference to this matter. I was sick the last week and I was not there. They say that I was drunk that week, but that is not true. At the time I sent the tetelegram of Dec. 31st, 1920, Simpson was negotiating with Peabody-Hotelling Company of Chicago for an advance, so that up to the time the bank closed, we were constantly endeavoring to obtain a loan of \$300,000 or \$400,000 to continue the construction of the building. It was never the intention that the Scandinavian-American Bank of Tacoma was intended to finance that building. Never was at any stage of the game the intention that the bank should finance any part of it. It was not the intention that the bank would be paid all of its advances out of the \$600,000 mortgage. I figured that the bank would then have \$350,000 of second mortgage bonds for the real estate. There was \$65,000 of water in the real estate carried by the bank that should be written off. The building was estimated to cost \$1,080,000. To pay that we would have the loan of the Metropolitan for \$600,000 the capital stock of the building company which had been paid in [834] \$200,000 and open loans by the bank to the building company secured by second mortgage bonds of \$280,000, and out of this \$280,000 the Scandinavian-American Bank of Seattle was to take \$150,000, leaving \$130,000 for this bank. That is the proposition in all its simplicity and it is not a violation of any law existing then or existing now. I refuse to state whether a deed from the Scandinavian-American Bank to the Scandinavian-American

(Testimony of O. S. Larson.)

Building Company, was executed on February 10th, 1920, for that is in a criminal indictment which has been found against me because I have been arrested 36 times and I am not going to be arrested the 37th. I object to answering questions with reference to the statement of the financial condition of the bank of February 28th, 1920, for the same reason, my name is on it, but I did not sign it. I expected simply to use the \$600,000 second mortgage for the purpose of making this temporary loan of \$300,000 or \$400,000, it was to be used as collateral, there is no question about that at all. The \$600,000 mortgage assignment was not taken with any idea of security or preference whatever, and when I got back on October 17th, I told the bank commissioner we would have to carry this building to its completion before we could get the money from the Metropolitan and he said he would talk it over with the Attorney General and let us know if there was any objection to it. But he did want us to collect some money from some of the large borrowers in the Bank. He made that condition. I never told Mr. McCrery or Mr. Frank Lamborne, one of the trustees of the bank, or anybody at all that not one cent of the money of the Scandinavian-American Bank of Tacoma was to go to the building. I received the letter marked Receiver's Exhibit 219. [835]

**Receiver's Exhibit No. 219.**

June 21st, 1920.

Mr. O. S. Larson, President,  
Scandinavian-American Bank,  
Tacoma, Washington.

Dear Sir:

A short time after my appointment as Bank Commissioner I called upon you at the bank, only to learn that you were absent in the east. As your board was about to hold its regular meeting I was invited to remain and talk over several objectionable matters with them.

Among other things criticised was the large amount of money loaned to your directors and stockholders and to corporations in which they are interested. Loans to corporations with which Jafet Lindeberg is connected and loans to G. Lindeberg, your Vice President, and corporations in which he is interested were particularly called to the attention of your board. Mr. Lindberg is without doubt extending his operations beyond the limits of safety and must be required to reduce his various indebtednesses. It was my understanding that Mr. Lindeberg's companies were to pay up what they owed and that his personal indebtedness would be reduced.

The practice of allowing overdrafts has apparently gotten beyond control as shown by the report of last examination. The fact that the overdrawing of the account of an officer, director or employee

constitutes a felony should be sufficient warning to all offenders. It does not, however, appear to be, inasmuch as a great many of the overdrawn accounts are of officers and employees.

The "memo" carried in your loans and discounts, representing unpaid advances made for W. H. Metson, \$4, 375.00, E. O. Lindblom, \$70,000.00 and Jafet Lindeberg, \$89,250.00 and advance made by this bank amounting to \$17,500.00, a total of \$181,125.00, all of which was paid to the Federal Reserve Bank, Seattle, must be eliminated if it has not already been. This transaction is irregular and all of the advances made must be taken up in cash and not by personal notes. A complete report of this matter will be appreciated.

Items listed under Schedule "A," sheet 11, of the last report of examination were to be charged off as soon as your capital was increased. Will you please advise me whether or not this was done.

The South Willis and Pierce County Coal Companies liabilities appeared to be in a fair way to be eliminated from your assets. This office has received no report as to the result of the contemplated sale of the coal companies' property to the Peabody interests. Will you kindly give me the full details pertaining to this matter.

Your bank at the time of the last examination was instructed to reduce its line of auto loans. This paper was not in the best of shape and much grief could be expected should a business depreciation be encountered. Conditions at this time make it even more imperative that automobile loans be materially



(Testimony of O. S. Larson.)

reduced and no dealers financed unless an excellent financial statement is shown. [836]

It is some time since your bank was examined and I trust that many of the objectionable items have already been eliminated. You have yourself informed me of a number which you have been able to collect. For this reason I will not go further into the matter of your last examination. In discussing with your board the building which is being constructed by the Scandinavian-American Building Company and which it is intended that the bank shall occupy, it was stated that the bank would carry second mortgage bonds or would in some way finance the building. This was not the understanding of this department and as I recall it you told me at one time in Tacoma, that your building was to be financed without using one cent of the bank's funds. Kindly let me hear from you on this subject as it is very important that there be no misunderstanding in the matter.

Yours very truly,

(Signed) CLAUDE P. HAY,

Bank Commissioner.

CPH:HS.

I refuse to answer upon the same ground whether or not the bank commissioner informed me that I had represented that not one cent of the bank's money was to go into the building. I do not know whether or not four days after the receipt of that letter, I put \$200,000 of the funds of the bank to the account of the building company. Nothing illegal about it if I did. I received the letters

(Testimony of O. S. Larson.)

marked Receiver's Exhibit 220 and 221, but with reference to Exhibit 221, I want you to understand that I went down to Olympia before this letter was received, on October 17th, 1920, and had a conference with Mr. Hay and told him the whole story about the building and he said he would talk to the attorney general about it and we told him we would have to go through and complete the building, that there was no way out of it, until we could get the Metropolitan money, and that letter (Exhibit 221) is confirming that conversation. I received the letters marked Exhibit 220 and 221. [837]

**Receiver's Exhibit No. 220.**

August 23, 1920.

Mr. O. S. Larson, President,  
Scandinavian-American Bank,  
Tacoma, Washington.

Dear Sir:

In going over the report made by your bank to this department, in response to the call of June 30, I note an item of \$200,000, carried in stocks, securities etc. This item is called Scandinavian-American Building Company, and the date acquired is given as June, 1920. In other real estate owned an account of \$101,783.06 is shown as Scandinavian-American Building Company, and the date acquired as 9-29-19.

Will you kindly give me complete information relative to the two items mentioned?

My attention is also called to the fact that the reserve of your bank on the date of the call was

only 12%. This is a condition which should have your serious consideration, and you are hereby directed to bring your reserve up to meet legal requirements at once.

Yours very truly,  
(Signed) CLAUDE P. HAY,  
Bank Commissioner.

CPH:H.

**Receiver's Exhibit No. 221.**

November 12, 1920.

Mr. O. S. Larson, President,  
Scandinavian-American Bank,  
Tacoma, Washington.

Dear Mr. Larson:

As I am to-day leaving for a two-weeks' trip to California I shall be unable to take up with your Board the matter of your new building which you and Mr. Drury discussed with me in my office recently.

At this time it is my desire that the building be constructed and brought to completion without having the Scandinavian-American Bank in any way made a party thereto, and I desire particularly to remind you that you must use great care in order that the bank may not be allowed to appear in any way as a guarantor for any bills or accounts in connection with the construction of the building.

When talking with Mr. Drury recently I informed him that this department would not consider allowing your bank to carry the building as an

(Testimony of O. S. Larson.)

asset until the objectionable paper of officers, directors and stockholders was entirely eliminated. After this [838] matter has been satisfactorily taken care of this department will go into the matter more fully and, should it feel that it is justified to do so, it may allow you to carry your building at an amount slightly in excess of the 30% of your capital, surplus and undivided profits, as set forth in the law.

I hope to be able to go into this matter fully upon my return from the South.

Yours very truly,

(Signed) CLAUDE P. HAY,

Bank Commissioner.

CPH:H.

In further explanation of that letter, Exhibit 221, these loans to the building company and the capital stock of the building company had not been acquired by the Scandinavian-American Bank, in violation of any existing laws of the State of Washington, and I have been indicted on four counts on account of loans made to the building company, not because they were made in violation of the law, but because they were made to a concern in which the directors were interested without a resolution of the board. After I received the letter of June 21, 1920, I believe there was one loan over the capital stock of the building company, which I never considered a loan and which was not in violation of any existing law at that time.

Q. On November 8, 1920, six days after you re-

(Testimony of O. S. Larson.)

ceived this last letter from the Bank Commissioner, telling you not to—

A. You better read the letter; it does not prohibit any loan at all, [839] it prohibits signing directly any contract whereby the bank would be liable for damage suits or bills against that building.

Q. Or carrying any of that money?

A. It never says that at all.

Q. As an asset of the Bank Building Company.

A. I disputed with him,—

Q. After this letter of June 21?

A. That was settled in Olympia at that conference with Mr. Hay on the 17th of October, I am telling you.

Q. On the 8th day of November, 1920, you loaned to the Scandinavian-American Building Company the sum of \$100,000 did you not?

A. I believe that was a renewal of another loan they had there. I am not ready to testify on any of this security. I did not keep the books there at the bank and Mr. Geiger's testimony on that should be more accurate than mine, I never made a scratch or a figure on those books in all the four years I was there. That is my signature on Defendant's Exhibit 190, "O. K. O. S. Larson." I admit buying that stock and I also want to say the board of directors knew all about it. That it was passed on by Mr. Williamson as being perfectly legal and above-board in every respect. They never objected to it, they knew all about it. I do not be-



(Testimony of O. S. Larson.)

lieve it was ever brought up at any meeting of the stockholders, nothing in the law that required me to do it. The matter was brought up at a meeting of the board of trustees in April and again in December, 1920, and very thoroughly discussed and understood. I do not remember the directors who knew of it. The Bank Commissioner never objected to that and never protested against it. I have never examined the records of the bank to determine whether or not the Board of Trustees or the stockholders passed a resolution [840] authorizing me to subscribe for the stock of the Scandinavian-American Building Company for the bank or to pay that money for the bank, I presume there is such a resolution, because I have not been indicted for it. The note was delivered with the mortgage and the assignment to me in Chicago. At that time it was understood that the assignment of the mortgage itself carried with it an assignment of the note. I received the telegram marked Receiver's Exhibit 222.

**Receiver's Exhibit No. 222.**

1919 Dec. 30 PM 5 53.

FY Philadelphia Penn 30

Geo Williamson

Scandinavian-American Bank Bldg. Tacoma,  
Wash.

Had conference with Stabler Metropolitan Stop  
You can prepare mortgage to anyone you wish  
Stop Metropolitan will take an assignemtn of

this mortgage Stop In the meantime you can prepare participation agreement which this mortgage will secure Stop The participation you can use as collateral for money borrowed during the construction Stop Stabler is writing Oldham as to form etc Stop Happy New Year to all

G. WALLACE SIMPSON. [841]

**Receiver's Exhibit No. 223.**

\$600,000.

March 10th, 1920.

For value received, without grace, I promise to pay to the order of G. Wallace Simpson, of Philadelphia, Pennsylvania, the principal sum of Six Hundred Thousand Dollars (\$600,000), with interest thereon from date hereof at the rate of six per cent (6%) per annum, until maturity, payable semi-annually on the first days of May and November of each and every year. Said principal sum shall be paid as follows:

Ten Thousand Dollars on November 1, 1921;

Ten Thousand Dollars on May 1, 1922;

Ten Thousand Dollars on November 1, 1922;

Ten Thousand Dollars on May 1, 1923;

Ten Thousand Dollars on November 1, 1923;

Ten Thousand Dollars on May 1, 1924;

Ten Thousand Dollars on November 1, 1924;

Ten Thousand Dollars on May 1, 1925;

Ten Thousand Dollars on November 1, 1925;

Ten Thousand Dollars on May 1, 1926;

Ten Thousand Dollars on November 1, 1926;

Ten Thousand Dollars on May 1, 1927;

Ten Thousand Dollars on November 1, 1927;

Ten Thousand Dollars on May 1, 1928;  
Ten Thousand Dollars on November 1, 1928;  
Ten Thousand Dollars on May 1, 1929;  
Ten Thousand Dollars on November 1, 1929;  
Ten Thousand Dollars on May 1, 1930.  
Ten Thousand Dollars on November 1, 1930;  
Ten Thousand Dollars on May 1, 1931;  
Ten Thousand Dollars on November 1, 1931;  
Ten Thousand Dollars on May 1, 1932;  
Ten Thousand Dollars on November 1, 1932;  
Ten Thousand Dollars on May 1, 1933;  
Ten Thousand Dollars on November 1, 1933;  
Ten Thousand Dollars on May 1, 1934;  
Ten Thousand Dollars on November 1, 1934;  
Ten Thousand Dollars on May 1, 1935;

and the balance of said principal sum, to wit, three hundred twenty thousand dollars (\$320,000), on November 1, 1935. Said principal sum shall bear interest from maturity until paid at the rate of twelve per cent per annum. Said principal sum and interest shall be paid in United States Gold Coin of the present standard of weight and fineness, at the Office of Metropolitan Life Insurance Company in New York, N. Y.

This note with interest is secured by a first mortgage of even date herewith, executed and delivered by the maker hereof to said G. Wallace Simpson, conveying certain real estate described therein, in Pierce County, State of Washington, the terms whereof are made a part hereof.

It is hereby agreed that if default be made in the payment of this note or any part thereof, or any in-

terest thereon, or if failure be made to perform any of the covenants or agreements contained in said mortgage securing this note, then, at the option of the holder of the same, the principal sum, with accrued interest, shall at once become due and collectible, without notice, time being of the essence of this contract, and said principal sum shall bear interest from such default until paid at the rate of twelve per cent per annum. [842]

In case suit is instituted to collect this note or any portion thereof, I promise to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit. I consent to a personal deficiency judgment on the above debt, with the intent that the same may be paid in full, irrespective of the security given therefor.

This contract is to be construed in all respects and enforced according to the laws of the State of Washington.

SCANDINAVIAN-AMERICAN BUILD-  
ING COMPANY.

(Signed) By CHARLES DRURY,  
Its President.

(Signed) and by J. V. SHELDON,  
Its Secretary.

(Attached to the above, are following revenue stamps:)

\$100 Scand.-Amer. Bldg. Co. March 10, 1920—48717.

\$10.00 Scand.-Amer. Bldg. Co. March 10, 1920.

\$10.00 Scand.-Amer. Bldg. Co. March 10, 1920.

I cannot give you any reason why I signed the subscription list of the building company with my

(Testimony of O. S. Larson.)

individual name. The directors knew that I had pledged my credit for \$200,000 which had been put into the bank and that I was not going to pay it, and that the bank was going to take the stock, and limit the liability on the construction of this building. I would not say that I had authority from anybody connected with the Scandinavian-American Bank, the stockholders or trustees, to make the subscription, they never did dispute it. The trustees had full knowledge of it and knew all about it at all times. I think they knew that it was done on behalf of the bank. They knew that I had pledged my credit for all the money I could raise that had been paid to this bank, and they all knew what was going on. I subscribed for that stock on behalf of the bank. I don't know what message it would carry to the mind of any second person. I do not know what that item of \$9133.21 dated December 31, 1920, shown on sheet No. 233 of Flick's Exhibit 188 is. I do not know whether it is an interest charge on the \$200,000 or not, you will have to prove that by somebody else. I wrote the letter marked Exhibit 224. [843]

**Receiver's Exhibit No. 224.**

April 15, 1920.

Bausman & Oldham, Attorneys,

Hoge Building,

Seattle, Washington.

Attention: Mr. R. O. Oldham.

Gentlemen:

Upon my return from the east, I beg to confirm



having sent you the following telegram from New York, March 11th, 1920:

“What answer did you receive from Stabler regarding proposed change Tacoma Mortgage. Would appreciate receiving night letter from you Saturday morning giving your latest information about this matter address Plaza Hotel New York. Kindest regards.”

To which I received the following reply; dated at Seattle, March 13th:

“Stabler telegraphed no oral understanding with Simpson modifying original instructions, but assents to taking assignment mortgage from Simpson if we approve form of mortgage and assignment Stop This subject to original unmodified conditions Stop Mortgage to Simpson executed and recorded March tenth before construction work started everything satisfactory Stop Suggest if any changes or modifications originals authorization of loan you secure in writing from Stabler Stop Am writing Stabler details to-day.”

I find that the mortgage for \$600,000.00 was duly recorded by the boys here before any construction work whatever had been done on the new building. Everything seems to be getting along very nicely and the foundations to the new structure will very shortly be completed.

Very respectfully yours,

---

President.

(TELEGRAM.)

Omaha, Nebraska, March 11th, 1920.

Robert P. Oldham,

Hoge Building, Seattle, Washington.

What answer did you receive from Stabler regarding proposed change Tacoma mortgage Would appreciate receiving night letter from you Saturday morning giving your latest information about this matter Address Plaza Hotel New York Kindest regards.

Address Plaza Hotel, New York.

LARSON. [844]

EXHIBIT 224 (Continued).

(TELEGRAM.)

Mar. 13, 1920.

From Seattle, Wn., 12-13.

To O. S. Larson,

Plaza Hotel, NYC.

Stabler telegraphed no oral understanding with Simpson modifying original instructions but assents to taking assignment mortgage from Simpson if we approve form of mortgage and assignment Stop This subject to original unmodified conditions Stop Mortgage to Simpson executed and recorded March tenth before construction work started everything satisfactory Stop Suggest if any change *mor* modification originals authorization of loan you secure in writing from Stabler Stop Am writing Stabler details to-day.

R. P. OLDHAM.

I saw the letter marked Exhibit 225 and I see I

am criticised because my account was overdrawn \$42.50.

**Receiver's Exhibit No. 225.**

**NOTICE TO OFFICERS AND DIRECTORS.**

Scandinavian-American Bank of Tacoma, Washington, as at close of business January 5th, 1920.

Examined Jan. 5, 6, 7, 8, 9, 10, 12, 13, 14, and 15, 1920.

To the Officers and Directors of the Above Bank.

An examination of your bank, made on the above mentioned day, reveals certain matters which must have your immediate attention. Herewith I submit certain requirements, which must be complied with promptly in order that your bank may be put in a satisfactory condition.

The lawful money reserve of your bank on the first above-mentioned date was 10.8 per cent. Your required reserve was fifteen per cent. If your reserve is below the legal requirement, this is a notice to you that said reserve must be made good immediately.

(There then follows under the title of "Cash Items" and "Overdrafts" a number of irregular cash items and overdrafts which the commissioner ordered collected or charged off and under the title "Real Estate" a number of pieces of real property which had been carried for more than five years which he ordered charged off.)

3. Bank Building: This account should be carried at \$350,000.00 and the encumbrance of \$70,000.00 shown on your books as encumbrance on real estate.

(Testimony of O. S. Larson.)

This paper is signed as follows:

By Order of the State Bank Examiner of Washington.

Dated January 5th, 1920.

(Signed) C. H. EBERTING,  
Deputy State Bank Examiner. [845]

The term assignment, used in Receiver's Exhibit 224, means the substitution of Mr. Simpson's name in the mortgage in place of the name of the Metropolitan Life Insurance Company. The phrase in that order "This account should be carried at \$350,000 and the encumbrance of \$70,000 shown on your books as an encumbrance on real estate," I want to explain: Mr. Chilberg carried the real estate at what he called the equity, without showing the mortgage as a liability, that is the way it was carried in Seattle. This \$70,000 was not an obligation of the bank and for that reason Mr. Chilberg did not want to show it as a liability. That is the reason why this property was temporarily deeded to Chilberg at the time the Penn Mutual Mortgage was secured, and then immediately deeded back to the bank after the mortgage had been secured and this controversy was up between the banking department and Mr. Chilberg. The Bank Commissioner was wanting to have this liability shown, that is all that amounts to. At the time the financial statement Receiver's Exhibit 226 was made, the bank was in a very healthy condition, \$6,500,000 deposit. The statement marked Exhibit 226 shows a very healthy condition at that time, six and a half millions deposit. [846]

## Receiver's Exhibit No. 226.

Condensed Statement of Condition of  
SCANDINAVIAN AMERICAN BANK

of Tacoma

At the Close of Business May 4, 1920.

## OFFICERS.

O. S. LARSON,  
President.

G. LINDBERG,

Vice President.

J. V. SHELDON,

Vice President.

DEAN JOHNSON,

Vice President.

H. V. V. BEAN,

Vice President.

M. M. OGDEN,

Cashier.

A. T. GEIGER,  
Assistant Cashier.

O. J. JELLEBERG,

Assistant Cashier.

N. A. DONELSON,

Assistant Cashier.

F. C. HEWSON,

Manager Bond Department.

[847]

## LIABILITIES.

Capital Stock .....\$1,000,000.00

Surplus and Undivided Profits 248,528.09

Dividends Unpaid ..... 1,909.28

Demand Deposits \$4,195,431.52

Time and Sav-

ings Deposits. 2,338,701.27

6,534,132.79

Acceptances ..... 6,526.80

Notes and Bills Rediscounted 150,000.00

Bills Payable ..... 400,000.00

\$8,341,096.96

Loans and Discounts.....\$4,402,314.16

Customers' Liability Under

Acceptances ..... 6,526.80

United States Bonds..... 262,295.00

U. S. Army Training & Sup-

ply Station Bonds, Pierce

County Road and School

Bonds and Warrants..... 505,954.20

Railroad, Industrial and Local

Improvement Bonds and

Warrants ..... 1,487,601.00

Banking House ..... 280,000.00

Other Real Estate ..... 209,794.60

CASH AND EXCHANGE... 1,186,611.20

\$8,341,096.96



EXHIBIT 226 (Cont'd).

GUSTAF LINDBERG,

President of the Lindberg Grocery Company.

CHARLES DRURY,

Merchant,

GEO. G. WILLIAMSON,

Williamson, Williamson & Freeman, Attorneys.

J. P. SHELDON,

Vice-President.

DEAN JOHNSON,

Vice-president.

FRANK M. LAMBORN,

Allen & Lamborn Printing Co.

O. S. LARSON,

President. [848]

## Receiver's Exhibit No. 227.

The  
SCANDINAVIAN AMERICAN BANK  
Tacoma, Washington  
STATEMENT OF CONDITION  
at Close of Business Feb. 28, 1920.  
RESOURCES.

Loans and Discounts.....	\$4,496,567.77
Customers' Liability Under Letters of Credit	7,000.00
Banking House .....	280,000.00
Other Real Estate .....	210,645.30
Railroad, Industrial and Local Improvement	
Bonds, Warrants, etc.....	987,015.61
U. S. Army Training and Supply Station	
Bonds & War'nts .....	602,267.17
U. S. Bonds, Treasury Certificates, Cash and	
Exchange .....	737,602.05
	<hr/>
	\$7,321,097.90

## LIABILITIES.

Capital Stock .....	\$ 400,000.00
Surplus and Undivided Profits.....	105,622.19
Dividends Unpaid .....	949.28
Demand Deposits .....	\$3,957,942.89
Time & Sav. Deposits.....	2,324,583.54
	<hr/>
Guaranteed Letters of Credit.....	6,282,526.43
Notes and Bills Rediscounted.....	7,000.00
Bills payable .....	150,000.00
	<hr/>
	\$7,321,097.90

[849]

## OFFICERS.

O. S. Larson.....	President
G. Lindberg .....	Vice-President
J. V. Sheldon .....	Vice-President
Dean Johnson .....	Vice-President
H. V. V. Bean.....	Vice-President
M. M. Ogden .....	Cashier
A. T. Geiger .....	Assistant Cashier
O. J. Jelleberg .....	Assistant Cashier
N. A. Donelson .....	Assistant Cashier

## DIRECTORS.

GUSTAF LINDBERG,  
President of the Lindberg Grocery Company.

CHARLES DRURY,  
Merchant.

GEO. G. WILLIAMSON,  
WILLIAMSON, WILLIAMSON & FREEMAN, Attorneys.

J. V. SHELDON,  
Vice-President.

DEAN JOHNSON,  
Vice-President.

FRANK M. LAMBORN,  
Allen & Lamborn Printing Co.

O. S. LARSON,  
President.

(Testimony of O. S. Larson.)

I sent the telegram, Exhibit 229. The one, Exhibit 228, I don't remember anything about, but I think it refers in part to the liability bonds.

**Exhibit No. 228.**

(Flick.)

June 1, 1920.

G. Wallace Simpson,

Medical Arts Building, Philadelphia, Pa.

Under existing money condition have decided to take Metropolitan loan six hundred thousand. Am arranging with Hanson and Rowland Furnishing bond covering completion. Writing Stabler to-day. Have you any suggestions and when will you arrive here.

LARSON.

**Exhibit No. 229.**

(Flick.)

**NIGHT LETTER.**

Tacoma, Wash., November 20, — 20.

G. Wallace Simpson,

Medical Arts Building, Philadelphia, Pa.

Suggest you interview Stabler requesting advance two hundred thousand dollars against assignment of your mortgage and deposit by us additional security Pierce County bonds and Liberty Bonds Bausman and Oldham will recommend. Have you heard anything from Strauss.

O. S. LARSON.

Charge S. A. B.

OSL/R [850]

The stock certificates contain the names, the sig-

(Testimony of O. S. Larson.)

natures of Drury and Sheldon. I did not see them endorse theirs. I endorsed mine to transfer title to the bank. I do not know that they knew that I had endorsed mine, I am responsible for mine only. The note for \$360,000 was made when I was beyond the boundaries of this State and I did not see it. The second mortgage bonds were to be in the sum of \$750,000. \$350,000 of those were to be turned over to the bank for the real estate, Mr. Webber said he wanted some of the bonds on hand when he came to final settlement with the contractors, because he said he could always work off some of them on the tail end of the contract, and he always did so in Philadelphia where they use third mortgage bonds instead of second, some of those bonds had agreed to be taken by the men who finished up the banking-rooms, and those that were left, if any, were to be held by the bank as collateral for any advances that they had on the wind-up. A matter of the leasing of the banking quarters and the basement was discussed with my associates and it was understood that the bank was to pay \$25,000 or \$30,000 a year. At the time I was discussing the lease by the bank of the bank quarters, the bank owned the stock and the bank was to get \$350,000 of the second mortgage bonds on the building. Mr. Simpson was a stockholder in the bank to the extent of \$8,000, a reputable mortgage broker and real estate holder in Philadelphia and he had no authority to make representations to anybody except the Metropolitan Life Insurance Company. He had no authority from the bank or building

(Testimony of O. S. Larson.)

company to deal with any of these contractors and any representations that Mr. Simpson made, neither Mr. Drury nor I ever gave him authority to do so. Exhibit 230 is the resolution of the building company with regard to a temporary loan Simpson was to secure. I did not have anything to do with the building except as a representative of the bank. [8501½]

**Receiver's Exhibit No. 230.**

**POWER OF ATTORNEY.**

**KNOW ALL MEN BY THESE PRESENTS:**

That WHEREAS at a meeting of the board of trustees of the Scandinavian-American Building Company, a corporation, organized under the laws of the State of Washington, held on the 17th day of August, 1920, in the city of Tacoma, Pierce County, Washington, the president and secretary of said Scandinavian-American Building Company were, by resolution of said board of trustees of said corporation, authorized, directed and empowered to execute a power of attorney to G. Wallace Simpson of Philadelphia, Pennsylvania;

NOW, THEREFORE, and pursuant to the resolution of the board of trustees of said corporation, the said Scandinavian-American Building Company, a corporation organized under the laws of the State of Washington and having its principal place of business in Tacoma, Pierce County, Washington, has made, constituted and appointed and by these presents does make, constitute and appoint G. Wallace Simpson of Philadelphia, Pennsylvania, its



true and lawful attorney for it and in its name, place and stead to negotiate for a loan not exceeding \$1,250,000.00, to be secured by first mortgage upon the following described real estate, situated in Pierce County, Washington, to wit:

Lots 10, 11 and 12, in block 1003, "Map of New Tacoma, W. T.,"

at a rate of interest not exceeding 6 per cent per annum and to mature at such time or times and in such amounts as to him, the said G. Wallace Simpson, shall be deemed proper and advisable, and upon concluding such negotiations, the said attorney in fact is hereby authorized and empowered to execute on behalf of this [851] company a formal

EXHIBIT 230 (Continued).

application for said mortgage loan.

Giving and granting unto said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as the said Scandinavian-American Building Company might or could do if personally present. Hereby ratifying and confirming all that said attorney shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF the said Scandinavian-American Building Company has executed this

instrument by its president and secretary thereunto duly authorized this 17th day of August, 1920.

SCANDINAVIAN - AMERICAN BUILD-  
ING COMPANY.

(Signed) By CHARLES DRURY,  
President.

(Signed) By J. V. SHELDON,  
Secretary.

State of Washington,  
County of Pierce,—ss.

I, the undersigned, a notary public in and for the State of Washington, duly commissioned, sworn and qualified, do hereby certify that on this 17th day of August, 1920, before me personally appeared Charles Drury and J. V. Sheldon, President and Secretary, respectively, of Scandinavian-American Building Company, the corporation that executed the within instrument, and acknowledged that the said instrument was the free and voluntary act and deed of the said corporation for the uses and purposes therein mentioned, and on oath stated that they were duly authorized to execute said instrument and that the seal affixed thereto is the corporate seal of said corporation. [852]

EXHIBIT 230 (Continued).

Given under my hand and official seal the day and year in this certificate first above written.

E. F. FREEMAN,  
Notary Public in and for the State of Washington,  
Residing at Tacoma.

That was signed by Mr. Drury and Mr. Seldon.

(Testimony of C. C. Sharp.)

The bank never received the second mortgage bonds in accordance with the resolution.

Mr. REYNOLDS.—I assume that the testimony that Mr. Larson and the others have given in reference to the claims in this case, besides the one on trial should be taken as given in those claims.

The COURT.—It will be so understood unless objection is made.

Mr. OAKLEY.—As I understand the testimony, the testimony here relates to the one main issue, anyway. This is a question of priorities all the way through, on mortgages and *hirnd*, labor and material and contractors, so I think it ought to all go in for every person interested.

Mr. LANGHORNE.—That is the understanding I have been proceeding under. [853]

**Testimony of C. C. Sharp, for Tacoma Millwork Supply Company.**

C. C. SHARP, a witness called and sworn on behalf of the Tacoma Millwork Supply Co., testified as follows:

Direct Examination.

(By Mr. FLICK.)

I was practically the bookkeeper of the Scandinavian-American Building Company during the period of its existence, and have with me the records of the company from the time that any records were kept.

On March 31, 1920, \$200 was deposited in the bank to the credit of the Building Company; on

(Testimony of C. C. Sharp.)

April 14, \$25,000; that was a loan from the bank; May 20, 1920, \$25,000. From my knowledge of the books it is a fact that the amounts received or held by the Building Company, correspond with the accumulating advances by the bank, practically entirely so, with the exception of \$200 received from the sale of the old vault doors in the old building at the time it was wrecked. Otherwise the moneys which the Building Company received and held were moneys obtained by the Building Company on its notes given to the Scandinavian-American Bank.

I find on the books the stock purchase payment of June 25, recited on the books as a deposit by O. S. Larson, account capital stock, \$200,000. That entry would be made from the deposit slip, which the bank would have.

Quite frequently there were overdrafts by the Building Company. On May 3, 1920, the Building Company had a balance in the bank of \$287.89. The next deposit was May 21, 1920. On May 10, \$5868.62 had been withdrawn from the Bank,—that was an overdraft. My records only show a note for \$25,000 deposited May 21, 1920, during the entire month of May. On May 25, we started with a balance of \$5,982.88. On June 4, there was an overdraft of \$12,156.68. My records do not show any note as having been given up to the next [854] deposit known as the stock purchase. If the note was given, it ought to be recorded through the account department for entry, and if the note had been given, it would have occurred in the customary

(Testimony of C. C. Sharp.)

course on the note sheet of the bank. Now, in the period running from August, September and October, we started with a balance of \$41,509.21, on August 8th, in the bank. On August 16, \$29,322.47 had been withdrawn. On September 10, \$34,391.41 had been withdrawn. That left a balance still in the bank September 11, \$7,129.84; on September 20, it amounted to \$36,218.51; September 22, \$54,715.74, so that there was an overdraft of something like \$47,000 on the 22d and on the 23d there was an overdraft of \$79,153.55—on September 23 there was an overdraft of \$79,153.55, less \$7,152.10, making the actual overdraft something like \$72,000. The records do not show any note given in that period of time in September for the carrying on of that overdraft. On October 14, we started with an overdraft of \$118,401.78, and during the month of October the records do not show any note as having been given to carry that overdraft. On November 18, there was an overdraft of \$7,429.06; no note was given to carry that. December 15, overdraft of \$6,552.37; no note was given for that. When the bank closed the overdraft was \$32,746.42.

Cross-examination.

(By Mr. OAKLEY.)

Defendant's Ex. 188, sheet No. 54920, under date of 1920, being \$100,000, four months, note dated 11-8-22, 6%, shows, there was a loan for \$100,000, four-month note, given to the bank at that time. Prior to that time (November 8, 1920) they had borrowed from time to time and they were paying off



(Testimony of C. C. Sharp.)

from time to time. There was \$50,000 on June 25th that they owed the bank. [855]

Mr. LANGHORNE.—Was there a note given on June 25th?

WITNESS.—That represents notes given on April 14 and May 21. There were some small items of cash coming into the Building Company outside of those notes. I made checks in payment of invoices which came in against the Building Company. All the money which was received from the various sources was paid out by checks of the Building Company; all the money which came to the credit of the Building Company was paid out for labor performed or material furnished on the building.

Cross-examination.

(By Mr. STILES.)

A memorandum was turned over to me to show a deposit, by the note teller at the bank; sometimes the information came to me from the officers of the Building Company. I would not know of a meeting of the Board of Trustees or Directors of the Building Company. My office was down in the bank's office; part of the books were there. As a matter of fact the books were kept upon the 7th floor of the Argonne Building, not in the bank's office. I was part of the time in the bank and part of the time up there. The bank did not have offices on the 6th floor; that was the office of the architect of the building.

(Testimony of C. C. Sharp.)

Cross-examination.

(By Mr. FLICK.)

In regard to the \$50,000 loan having been repaid, that that is the two \$25,000 amounts that were paid June 25; undoubtedly that came out of the preceding note that was the only thing I had to pay it out of, was the money that came into the Building Company; the check was drawn simultaneously with the deposit of the purchase money of \$200,000. Up to that time we had an overdraft. I never heard during the period up to December 30, near up to December 30, that this purchase fund for the stock was being charged back to the company as a loan; the books do not show it. I know that the check [856] was issued, but it never passed through the books,—it was prepared, but it never passed through my books. There is no note for that particular \$200,000 purchase money shown on our books; no note of that kind ever came to me for entry on my books.

Cross-examination.

(By Mr. METZGER.)

Checks drawn by me were signed by Mr. Sheldon as secretary or Mr. Ogden as treasurer of the Building Company. Mr. Sheldon is one of the directors of the Scandinavian-American Bank, and also vice-president latterly; and Mr. Ogden is the Mr. Ogden who testified and who is cashier of the bank. As these overdrafts accumulated I usually called the attention of the directors of the Building Company to the fact that their account was over-

(Testimony of C. C. Sharp.)

drawn, in particular Mr. Sheldon or Mr. Ogden, and Mr. Drury if he happened to be in there. I do not know anything further about the providing of funds, save and except I received a memorandum showing that notes had been put through the Scandinavian-American Bank.

(Witness excused.) [857]

**Testimony of Miss Edith Carlson, for Tacoma  
Millwork Supply Company.**

MISS EDITH CARLSON, a witness called by Tacoma Millwork Supply Company, testified as follows:

Direct Examination.

(By Mr. FLICK.)

I was secretary to Mr. Frederick Webber while he was here as architect of the Scandinavian-American Building, and did his stenographic work for him, and while these building contracts were being formulated I was present at the Tacoma Hotel at the office of Mr. Webber and Mr. Simpson and Mr. Drury; that was the headquarters of the Building Company at that time.

I recall Mr. George Davis being at the office in connection with his particular contract. I would not want to say exactly, I do not know just what was said. I believe that the contractors understood that there was \$400,000 on hand, by Mr. Drury's statement to them, I believe; they all understood I believe that amount was there; that is

(Testimony of Miss Edith Carlson.)

my recollection. In reference to the \$600,000 mortgage, there was a statement made that it had been secured, but it was understood that the mortgage was just about to go through, the loan was just about to go through. I think that Mr. Drury made a statement that it was necessary that this lien clause should be in on account of the fact that they were to secure their loan through the Metropolitan Life Insurance Company, that the company demanded it. I know that the Davis (Tacoma Millwork Supply Company) contracts were changed; I do not know who demanded it, but I know that the contracts were changed. I think it was the understanding that all the contracts would have to remain alike. I got that understanding from conversation between contractors and Mr. Drury and several of the contracts in the office there; all the contractors were not in the office there, some of the contractors were not present at that time. I do not know the statement was made to all of them; I know it was made to some of them. I remember Mr. E. E. Davis being at the office and the representations [858] made to him were practically just the same as was referred to.

Cross-examination.

(By Mr. OAKLEY.) -

I think that the same representation was made to almost all the contractors, the Washington Brick, Lime & Sewer Pipe Company, Ben Olson & Company. I believe that the lien clause was later struck out of the Washington Brick, Lime & Sewer



(Testimony of Miss Edith Carlson.)

Pipe Company contract; McClintic-Marshall Company had an entirely different contract. I heard a great deal of discussion, all of them in fact objected to signing the contract. To some of them the matter was explained satisfactorily and they went ahead and signed it; and others refused and had the clause stricken out. They represented that the loan was about to go through; I do not believe there was any representation that the loan had actually been made. I do not know very much about the first loan, that was before me. It was practically understood that was ready when they (Webber and Simpson) came out here, that the loan was just about to go through. I have not any correspondence on that. I refer to the loan they attempted to get through the second time Mr. Simpson was out here, after they found that the other loan was not going through. I did not hear any different representations made to one contractor than was made to another; the same representation was made to all. The clauses in reference to the waiver of lien were stricken out without Mr. Webber's knowledge; I think Mr. Webber and Mr. Simpson had returned east. I think when Mr. Webber was here that it was his understanding that the contracts were all to be alike with the exception of the McClintic-Marshall contract Mr. Drury knew about it. I did not say that Mr. Webber did not know about it until he returned to Tacoma. He did not know until he returned to his office in Philadelphia, and then he was apprised of it by wire or by letter.

(Witness excused.) [859]



**Testimony of M. M. Ogden, for Tacoma Millwork Supply Company.**

M. M. OGDEN, a witness called by the Tacoma Millwork Supply Company, testified as follows:

**Direct Examination.**

(By Mr. FLICK.)

As you requested, I have brought the loose leaf sheet showing the Two Hundred Thousand Dollars Stock transaction. This was carried under "Stocks and Securities" and the entry on June 25th, payment in full, stock subscription, Scandinavian-American Building Company, Two Hundred Thousand Dollars is correct. The little slip signed Ole Larson, is the notation that the general bookkeeper made, I presume he took it from the slip, he makes his entries from that. That is the only record I know of with reference to this transaction prior to December 30th. There is no record showing any change over from a purchase into a loan. No entry is carried on the \$20,000. The only other reference that is the ticket at the end of the year showing the interest paid on this amount. Interest was charged at the end of the year, after the Bank Commissioner was there, about December 15th. The Bank Commissioner did not order us to change that over into a loan, I do not think he made any recommendations that I know of. The only thing I know in connection with this, is shown by the entry on those tickets. Whereupon the ledger sheet was admitted in evidence and marked Exhibit #234.

**Exhibit No. 234.**

(Flick.)

Exhibit 234, account No. 13, sheet No. 1—13, Stocks and Securities. This is the ledger sheet of the Scandinavian-American Bank and shows various Debits and Credits, entries among which is the following: debit entry:

June 25, 1920, Payment in full stock Sub. S. A. Bld. Co. \$200,000. [860]

The check of the Scandinavian-American Building Company by Sheldon of \$9,133.35 to the Bank for interest items, involving interest on the capital stock of the Scandinavian-American Building Company, 6% on \$200,000 from June 25, 1920, to December 30, 1920, was evidently made under the authority of the letter accompanying it which was signed O. S. Larson, as follows: "Enter this voucher as real estate loan and hold until advance is secured on the mortgage, then charge same to account of the Scandinavian-American Building Company." Signed O. S. Larson, President. I do not know whether the Bank Commissioner ordered him to do that or not, that is Mr. Larson's signature. So far as the Bank's books are concerned, up to this particular time, December 31, 1920, they showed that this was being carried directly as a stock purchase, and the entry of December 31st is the first time any interest charge was made against it.

Whereupon Exhibit #235 was offered and received in evidence.

**Exhibit No. 235.**

(Flick.)

SCANDINAVIAN-AMERICAN BUILDING CO.

Tacoma, Wash., December 31, 1920.

To Scandinavian-American Bank,

\_\_\_\_\_, Dr.

In full for invoices as follows:

Interest on capital stock of Scandinavian-American Building Co.—6% on \$200,000 from June 25, 1920 (date of entry) to December 31, 1920 .....	\$6,300 —
Interest on Drury Lot—6% on \$65,000 from Sept. 25, 1920 to December 31, 1920 .....	1,083 25
Interest on Banking House Investment—6% on \$350,000 from December 1st to December 31, 1920 .....	1,750 —
	<hr/>
	\$9,133.25

Distribution.

Interest—(Carrying charges). [861]

On the reverse side thereof is the check of the Scandinavian-American Building Company to the Scandinavian-American Bank for \$9,133.25 signed by J. V. Sheldon, Secretary-Treasurer.

(On the letter-head of the Scandinavian-American Bank, attached thereto.)

“Enter this voucher up as real estate loan and hold until advance is secured on the mortgage,

(Testimony of M. M. Ogden.)

then charge same to account of the Scandinavian-American Building Company.

(Signed) O. S. LARSON,  
President."

(Attached thereto on memorandum sheet:)

"Int. on bldg. Co.—Capt. Stock from 6/25—

20 to Dec. 31, 1920—200,000 .....6300 —

Interest on 65,000 6% from Sept. 22—Dec.

31, 1920 100 days .....1083.25

Interest 350,000 from Dec. 1 to Dec. 31,

1920 .....1750.00

52,510.68                      466,934.15                      6300.

385,761.48                      438,272.16                      1083.25

—————                      —————                      1750

438,272.16                      28,661.99                      —————

9,133.25

—————                      9133.25"

19,528.74

I never knew anything about the note signed by Mr. Drury and Mr. Sheldon which has been mentioned for \$353,000 or \$363,000, until after the bank was closed. I think it was in Mr. Haskell's possession the first time I saw it.

Cross-examination.

(By Mr. OAKLEY.)

The signature to Exhibit 235 is Mr. Larson's signature, and is a direction of the way in which to enter the voucher. That was given to the loan clerk and not to me. The figures on the yellow memorandum sheet attached thereto are in Mr. Larson's handwriting. I know nothing about this

(Testimony of M. M. Ogden.)

except what the exhibit shows. The notation under "distribution, interest, carrying charges" is in Mr. Larson's handwriting.

The item of \$280,000.00 contained in Exhibit 226 represents the equity of the Bank in the two corner lots, less \$70,000.00 mortgage. This was carried in familiar with the books of the bank closed. I am familiar with the books of the bank. Prior to June 25th, 1920 there [862] were two notes of \$25,000.00 each of the building company's and \$280,000.00 for the equity in the corner lots and \$65,000.00 for the Drury lot, and I think there was an overdraft, so that exclusive of the \$70,000 mortgage item there was \$395,000.00 that the building company owed the bank, at least, on June 25, 1920.

Cross-examination.

(By Mr. STILES.)

When the Scandinavian-American Bank deed the two lots to the Scandinavian-American Building Company, Mr. Larson was handling the entries and I presume no change was made in the real estate holdings account for the reason that it was held waiting delivery of the bonds which were to be turned over to the Bank for the real estate but which were never issued. The bookkeeper was keeping the books in that way because there had been no instructions to change them.

Cross-examination.

(By Mr. HOLT.)

I arrive at the conclusion that the equity of the



(Testimony of M. M. Ogden.)

Bank in the two corner lots was \$280,000 because the lots were held by the Bank at \$350,000 and there was a \$70,000 mortgage to the Penn Mutual. On the reports to the Bank Commissioner the lots were put in at \$350,000 less the \$70,000 mortgage, showing the Bank's investment at \$280,000. I do not know what they cost the bank. [863]

**Testimony of J. V. Sheldon, for Tacoma Millwork Supply Company.**

J. V. SHELDON, a witness called by Tacoma Millwork supply Company, testified as follows:

Direct Examination.

(By Mr. FLICK.)

The #363,000 note exhibited here in court was found in the papers upon my desk at the time that the bank closed its doors. It had never been entered on any books of the bank building company, nor was it ever entered upon the books of the Bank. The note was signed by myself and Mr. Drury. The bonds had not been delivered to the Bank according to the agreement between the Bank and the Building Company, and the Bank was holding nothing at the time, that was the reason the note was executed, so that the bank would have something to show for the deed that they had made. The note never would have been used if the bonds had been delivered. If I remember correctly, it was for \$350,000 with some interest on it. I do not remember the exact date the interest was figured.

(Testimony of J. V. Sheldon.)

There is a notation attached to the note, I think that will explain. The basic principal, not interest, will be exactly the same amount as the bank's portion of the second mortgage bonds. I do not know who discovered this note in the files when the bank closed; it was in my papers. I never at any time had a board meeting on this particular note, where the bank board made and accepted this note.

Cross-examination.

(By Mr. STILES.)

Exhibit 178 is the minute-book of the Scandinavian-American Building Company of which I was secretary. That book contains the minutes of all meetings of the board of directors and trustees of that corporation. [864]

**Testimony of Gustav Lindberg, for Tacoma Millwork Supply Company.**

GUSTAV LINDBERG, a witness called by Tacoma Millwork Supply Company, testified as follows:

Direct Examination.

(By Mr. FLICK.)

I was one of the trustees and the vice-president of the Scandinavian-American Bank during the year 1920.

In reference to the erection of the Bank Building, the first knowledge I had of it was when George Williamson called me up one time and wanted to see

(Testimony of Gustav Lindberg.)

me, and I went up there, and there was Mr. Drury; and he wanted to incorporate the building company. Mr. Larson was in the East and he had been negotiating for some money. I told him I had no time and I had no desire to serve or be an officer in this Building Company. They finally said this is only temporary and there will be new officers after three months, so I subscribed for one share. I was not present when Mr. Larson signed for the balance. During the period that the contracts were being let, I had nothing to do with them; I imagine Mr. Drury handled them he was very active. I was never present when any contract was signed. I signed the articles of incorporation. I was never requested to attend any meetings after that; I was not present when the stock of the company was purchased by the bank; the first I heard that Mr. Larson had the stock, was when I read it in the paper after the bank was closed. I never heard that the bank purchased the stock. I had nothing to do with the transaction relating to this building and the contract and the organization. I paid no attention to the building when it was going up and when the steel began to arise, and the other supplies. I left that to Mr. Drury. I think he was the most active. I knew that Drury was actively engaged on that building, and in the handling of contracts and so forth. I was present at the meeting December, 1920, when the matter of the loan that was made by the bank to the Building Company came up. I know there was a loan came

(Testimony of Gustav Lindberg.)

out [865] and there was money advanced that they had need of. As to what occurred at that meeting in substance I think Mr. Larson made the statement that the Bank Commissioner was advising him to keep going on that building. To finish that building, not stop the erection of the building. I do not remember the Simpson mortgage at that meeting; I never saw it. I cannot recollect that the Simpson mortgage, and its presence, as to where it was and what was being done with it, was discussed at that meeting. I recalled that there was a mortgage of \$600,000. I do not say anything was said about it at that meeting. I do not recall that, but I know there was a mortgage. I heard of that, but I never saw the mortgage. I understand the \$600,000 Simpson mortgage was for the building. It was my understanding that it was to be used for the final completion of the building; I heard Larson had the building financed, that was the purpose of forming this company; we had a loan of this money, and that was to be thereafter the building was finished; that I did not know until very late and then I heard that story. First we thought that the money was going to come, at least I thought the money was going to come just like any other mortgage. I would say about the latter part of last year I heard that this mortgage was going to be used for final completion, the latter part of 1920.

(Testimony of Gustav Lindberg.)

Cross-examination.

(By Mr. LUND.)

I never knew that the \$600,000 mortgage had been assigned to the bank or that Larson had been instructed by the directors to go East and get that mortgage back. I never paid the \$100 for a share of stock in the Building Company. I was never asked to. I endorsed a certificate for one share after the Bank was closed. I never had this stock in my possession. Mr. Haskell asked me to endorse it. [866]

Cross-examination.

(By Mr. OAKLEY.)

At that time I was a director in the Scandinavian-American Bank of Tacoma, had been since 1908 or thereabouts, continuously up to the time of closing. As I stated before, the financing of the building was made in the east and that is where I thought the money was coming from. I cannot recall that any statement was made that the Bank's money would not be used in the construction of this building; I never heard that. There was not at any meeting of the trustees which I attended, any authorization to Mr. Larson to subscribe for all of the shares of the Building Company's capital stock except four, for and on behalf of the Scandinavian-American Bank. I have no knowledge of the fact that on June 25, 1920, the Bank advanced the sum of \$200,000 to the credit of the Scandinavian-American Building Company for the purchase of stock, nor that it was carried on the stock book.



(Testimony of Gustav Lindberg.)

Cross-examination.

(By Mr. LANGHORNE.)

I attended very few meetings of the bank. I was up at Lindberg running a mill a good deal of the time during the year 1920. I think I attended three meetings of the board of directors of the bank.

Cross-examination.

(By Mr. STILES.)

It was my understanding that Larson was going to get the money in the east. I do not remember what about the lots, but I suppose the understanding was the lots were to go in on the building. As I said before I had not any knowledge of this building until Williamson asked me to sign, and that Larson would get the money; that was all that was discussed there. The company was formed with the idea of getting money for this building, to put up that building. I did not understand then that the bank would have some stock in the building. I did not hear that the bank, after that, would have control of the building. There was no argument about conveying the Bank property to [867] the corporation at all. I understood they wanted to put up the building just like any other building. It did not enter my mind at all how the building company was going to have any right to build on these lots, and being the trustee of the bank I never inquired how it was that the building company was putting up a building on the bank property.

(Testimony of W. H. Pringle.)

Redirect Examination.

(By Mr. FLICK.)

I cannot tell you if I was or not, present at a meeting of the Bank December 10, 1920, as shown in the minutes of that date. I cannot recall any discussion about the Simpson mortgage. I do not believe I was in that meeting. [868]

**Testimony of W. H. Pringle, for Far West Clay Company.**

W. H. PRINGLE, a witness called and sworn on behalf of the Far West Clay Company, testified as follows:

Direct Examination.

(By Mr. HOLT.)

I was vice-president of the Scandinavian-American Bank of Tacoma in 1909 and '10 and continued until 1917. The Bank became the owner of the property at the corner of 11th and Pacific Avenue, the old Berlin Building, about the year 1909 or '10. The title was put in the name of Ole Granude, who was one of our directors at that time, and he subsequently conveyed the property to the bank. I think the bank paid about \$275,000 for that property. I think there was a balance on the old mortgage of \$65,000 and I think the Bank paid \$210,000 besides that mortgage. The Bank subsequently conveyed it to Mr. J. E. Chilberg or J. E. Chilberg and wife. Mr. Chilberg was president of the bank. Mr. Chilberg then executed a mortgage on that property and conveyed it back to the bank. The bank got the money for that mortgage, or got the benefit of

(Testimony of W. H. Pringle.)

it. That was done so that in the reports of the banking department, or in public statements, it would not be necessary to show a liability of the bank. Subsequently the property was again conveyed to Mr. Chilberg or Mr. Chilberg and wife and an additional mortgage to the Puget Sound Mortgage Company of \$50,000 was given by Mr. Chilberg after that he again conveyed it to the bank. The bank got the benefit of that mortgage. The reason for that transaction was just the same as previously. Later on the bank again conveyed the property to Mr. Chilberg and he then gave a mortgage to the Penn Mutual Life Insurance Company for \$100,000. The first mortgage was given in this manner which we have referred to for \$100,000 to the [869] Penn Mutual and then arrangements were made with the New York Life Insurance Company through Mr. Alfred, as manager of the Company, for them to take up that mortgage and renew it, and for some reason or other the New York Life Insurance Company could not go through with it and although the mortgage had been put on record, no money was obtained from them and they released the mortgage. In lieu of which we made arrangements with the Penn Mutual Life to have an extension made of the old \$100,000 mortgage, which I think was done, and I think the records will show that condition to exist. That mortgage was still in existence, operating under the extensions when I severed my connection with the bank. It is understood that this mortgage about which witness testified is the mortgage that the Bank Supervisor is

(Testimony of W. H. Pringle.)

attempting to enforce in this case, being mortgage dated December 2, 1910. Fee No. 324,182, given by J. E. Chilberg and Anna M. Chilberg to the Penn-Mutual Life Insurance Company for \$100,000. After getting this mortgage and during the time of my connection with the bank, the bank paid the interest. I do not recall whether we had commenced to make payments on the principal of this mortgage, but it is my recollection that there was an arrangement for extensions of the mortgage. There were arrangements made by which we were to pay, but whether we had commenced to pay them at that time or not, I do not remember. It was a mortgage on the bank property. They had to pay it if they wanted to keep the property.

Cross-examination.

(By Mr. OAKLEY.)

It was the intention of the Bank in these various transactions, to let the premises carry the loan and not the bank, October 27, 1915, is the date of the agreement for extension [870] of time of payment of the note and mortgage under this Penn-Mutual mortgage; the extension is signed, as to the Scandinavian-American Bank of Tacoma, by W. H. Pringle as president, attested by E. C. Johnson as secretary, with the corporation seal, and as to the Penn Mutual Life Insurance Co. by George K. Johnson, its president. It contains this provision:

“As part of the consideration to the Penn-Mutual Life Insurance Company for the granting of the mortgage extension to *tome* of pay-



(Testimony of W. H. Pringle.)

ment and change in the rate of interest, the undersigned Scandinavian-American Bank of Tacoma hereby request that the extension of time be granted on the terms specified in this agreement and hereby consents to said extension of time and change in the rate of interest, and acknowledges that said mortgage and said extension thereof are an absolute first lien on said premises, superior in every respect to any interest said Scandinavian-American Bank of Tacoma may have in said property or may hereinafter acquire therein; it being understood however, that Scandinavian-American Bank of Tacoma does not itself assume any personal obligation to pay the indebtedness secured by said mortgage. The only personal obligation to pay said indebtedness secured by said mortgage being Chilberg and wife."

That was the understanding I had, that was the understanding at the time, of the Bank Officials in reference to this matter.

Redirect Examination.

(By Mr. HOLT.)

The bank agreed to it. The bank caused it to be inserted, so that the bank did not have to publish it as an obligation of the bank. The bank paid this interest, and expected to pay the principal. The correspondence with the Penn Mutual was between myself and their agent here in Tacoma. We would have had to have paid the mortgage so as to protect our property. We got the benefit of this money, the property was good for it all the time. [871]



**Testimony of J. E. Chilberg, for the Receiver.**

J. E. CHILBERG, a witness called by the Receiver, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I live at Port Madison, Washington, and was formerly president of the Scandinavian-American Bank of Tacoma, and also connected with the Scandinavian-American Bank of Seattle. At the time this matter of the financing of a new building known as the Scandinavian-American Building Company, Tacoma, came up, I was connected with the Scandinavian-American Bank of Tacoma as President and Director. That was in 1918 and 1919. At that time I told Mr. Larson that the Scandinavian-American Bank of Seattle would take a portion of the second mortgage bond issue. I think the total was to be about \$150,000 or thereabouts. A first mortgage loan was to have been obtained and then the second mortgage bonds or their equivalent and then stock. I understood that the funds of the Scandinavian-American Bank of Tacoma might possibly be used to take a portion of the second bond issue. The intention was to sell those bonds off. The ultimate intention was to dispose of whatever interest the bank may have had in the old Berlin building. I was going to get the building entirely out of the bank as an asset.

The provision in the extension, Exhibit 245, to the

(Testimony of J. E. Chilberg.)

effect that J. E. Chilberg and Anna Chilberg, expressly agree to pay said principal sum and to pay said interest and to comply with all terms, provisions and conditions of said note, was inserted so that the bank would not be liable for that mortgage. Of course, originally this property was obtained, so as to provide, among other things, a permanent home for the Scandinavian-American Bank of Tacoma. The Scandinavian-American Bank did not want to invest a large sum of money, or a larger [872] sum of money than necessary in the property, that is, the building, nor did they want to publish their liability for a mortgage or mortgage note. The property was deeded to me and I assumed the liability with my wife, and issued the note, gave the mortgage, and deeded it, subject to that liability, to the bank. The Bank then became the owner, as I understand it of the equity over and above the mortgage. There was no obligation on the part of the bank to pay me on account of that mortgage and I never paid one cent to the Penn Mutual either principal or interest. Had the bank defaulted, I would have had,—I thought the property was worth it,—I would have stepped in and paid it myself and took the property over, the same as any other property I might have bought or sold, subject to mortgage. The time of the payment of that mortgage was extended according to the agreement.

Cross-examination.

(By Mr. LANGHORNE.)

I was president of the Scandinavian-American

(Testimony of J. E. Chilberg.)

Bank of Tacoma until January, 1920, when the election of officers was held. It was prior to the time I ceased to be president that the officers of the Scandinavian-American Bank of Tacoma conceived the idea of putting up a new building. I went east in the fall of 1919 to attend a United States Chamber of Commerce Directors' meeting and Larson met me there and asked me to see what I could do about financing the new bank building, and we were in New York together, but I did not go there to negotiate that loan. While there I telegraphed to Frank Hunter and got the address of G. Wallace Simpson, who had negotiated a loan on the Bailey building of Seattle, and asked Simpson to come over to Philadelphia to meet us. I introduced him to Mr. Larson as a broker who could probably [873] get the loan and Mr. Larson started negotiations with him then. No loan was secured on that trip, however. I knew that the officials of the Metropolitan Life Insurance Company had agreed to make a loan of \$600,000 on the building. I think it was increased to \$650,000 afterwards. I did not know what was the contemplated cost of the new building at that time. I do not think I ever did. It was changed frequently. I won't say that I knew it would cost considerably more than \$600,000. The original plan of financing the building which we talked over in Seattle, was that this building was to be financed, by first and second mortgage loans. The first mortgage loan was to be the Simpson or Metropolitan Life Loan if we could get the money

(Testimony of J. E. Chilberg.)

from them. We did not know where we would go to get it. I knew the first of January that there had been a \$600,000 loan agreed upon, I don't think there was a question of doubt in anybody's mind. I do not know the date of it. Letter marked Exhibit 202 dated August 6, 1919, is my letter I said we will take some of the second mortgage bonds, give us one-half or two thirds. We never did that, it was never offered to us, as a matter of fact. I never knew that the Scandinavian-American Bank had to put up any money on the building to carry it along. I knew that they never had gotten any money from the Metropolitan Life Insurance Company. I did not know of the Simpson mortgage at that time. The Metropolitan Life Insurance Company mortgage, I do not remember the date of that, but they had agreed to lend either \$600,000 or \$650,000 when the building was completed. There was supposed to be provided with which I had nothing to do, an interim loan plus these bonds, to take care of the building until it was completed. [874] I had nothing to do with it then. I was not in at the finish, I did not take any active interest whatever in the construction of the building or in its financing. I was not in a position to take any active interest in it, as I was neither an officer nor a director in the bank in 1920. I did not make any inquiry in 1920 as to whether they were going to issue the second mortgage bonds on the building. I was not interested in it.



(Testimony of J. E. Chilberg.)

Referring to deed, I never paid the Scandinavian-American Bank of Tacoma anything for that deed, did not rent the building to them after they deeded it to me. Had nothing more than the title that was issued to me and I gave it back to the bank within a few days. The proceeds were applied on the mortgage purchase price. I never spent any of the money. I was interested in the bank. I never got any of the proceeds of that mortgage money. It went to pay just what I have said, the old first mortgage and part of the purchase price.

Cross-examination.

(By Mr. STILES.)

The plan of financing was a first mortgage of \$600,000 or thereabouts, and a second mortgage and stock. This stock was expected to be sold. The original plan was to sell it to anybody that would buy it. I suppose somebody would subscribe it as those things are usually done until it could be placed. I was not there when it was subscribed by Mr. Larson. I do not know whether it was done. I have never seen the document. I do not know when it was done. I was still president on the 24th of November, 1919. I do not know that I was one of the directors of the building company at that time. I do not know I was ever a director of the building company. I was director of the bank. My signature appears on exhibit [875] 178 at the foot of the page, which purports to contain the original articles of incorporation. I was apparently one of the incorporators. I signed these ar-



(Testimony of J. E. Chilberg.)

ticles. It appears I was named as one of the directors. I knew at the time I signed these articles of incorporation what I was signing. I might have been present at the meeting of the board of trustees of the Scandinavian-American Building Company on the 25th day of October, 1919 (as it recites in the minutes), but I do not remember it; I have not any reason to doubt what is written there. It was probably intended that I should be there. I am hardly able to swear I was not, because I do not know where I was on that day. But this stock is subscribed by others than myself, and but one share by me and I never qualified, and I am enough of a corporation man to know I should have been if I participated in the meeting.

“Q. Now, being one of the directors and having been present at that meeting as it recites, you say now you do not know anything about what the plan of operation was going to be for financing that building.

A. I have said all I have to say as to what the plan was.”

Cross-examination.

(By Mr. HOLT.)

I did not get any of that \$50,000 that was borrowed from the Puget Sound Mortgage Company, it was not borrowed for my use or my benefit and it was never paid by me. No part of the Penn Mutual mortgage was paid by me, nor any interest on it, I never expected to pay it, if any demand was made,

(Testimony of J. E. Chilberg.)

certainly not. The bank might have sold it to somebody else and there would have been a default. If there had of been a default, I had to pay it; if there was not any default, I did not. I heard somebody say here that there is a proceeding in this court for the foreclosure of that mortgage; I have not been [876] made a party to that suit or notified of the pendency of it. I certainly never had any understanding with Mr. Duke or Mr. Haskell that no judgment would be sought against me and no recourse would be had against me, and it was never mentioned to me.

Cross-examination.

(By Mr. FLICK.)

I do not think that the Metropolitan Life Insurance Co. gave a commitment to the bank. (Counsel handed witness a letter.) This is addressed to the Building Company. I was told that and I think I have probably seen this commitment before. (Referring to another paper.) I never saw this commitment—the one of November 7, known as Exhibit 177. I heard it had been increased \$50,000. I may have seen this, but I do not remember. I do not remember hearing that the company wanted an individual bond from all the directors to the amount of \$100,000, until the loan had been reduced to \$500,000. It was my understanding that \$600,000 was to have been the first mortgage on the property, and probably there would be a second mortgage sufficient to take up the cost of this building. It

(Testimony of J. E. Chilberg.)

was understood that out of the second mortgage bonds or any other sum, the mortgage of the Penn Mutual was to be paid so as to leave it entirely as a first mortgage of \$600,000. I never heard that \$600,000 was to be sacredly kept for the final completion of the building. The \$600,000 was to be a first mortgage on that building; when the building was completed and free of liens, the Metropolitan would make it. What we did with the money or what was done with it, made no difference. We could not use that \$600,000 for material and work because we could not get it until it was finished. We could borrow money if anybody would lend it to us. [877] The builders would not accept certificates. It was not contemplated that the \$600,000 was to be used for anything except this building, borrowing the money for the purpose of the building.

Speaking of the \$70,000 mortgage of the Penn Mutual it was not merely for the purposes of bank bookkeeping. It was so that that obligation on the part of the bank would not exist, and it did not exist, at least that is what everybody who advised them told me. I did not expect the bank to pay it unless they wanted to. If they wanted to quit, I would have had to take the property and pay it myself. I have handled a great deal of this mortgage and equity business and whenever an equity has been offered and sold, the mortgage purchaser was expected to pay until he got tired. If he quit, the recourse went to the other fellow. I assumed that

(Testimony of J. E. Chilberg.)

obligation as an accommodation to the Scandinavian-American Bank and its stockholders. That equity did not belong to me.

Redirect Examination.

(By Mr. OAKLEY.)

I do not remember being a subscriber to the capital stock of the Building Company and on the page of the minute-book (Exhibit 178) where the trustees have qualified by taking an oath before a notary public, it is not signed by me. I do not know of any authority having been granted to O. S. Larson by the bank to make any subscription for \$199,600 for and on behalf of the bank and to bind the bank. I was president of the bank at that time. I would not say that I know he either had or had not been. I was not present at any meeting where such authority was granted. [878]

Recross-examination.

(By Mr. STILES.)

I was president of the bank at that time, I was going out and I had ten shares of stock, I evidently signed the articles of incorporation of the Building Company which was organized as part of the plan they had for furthering financing and construction of the building. Mr. Larson was Vice-president and manager of the Scandinavian-American Bank of Tacoma, I do not know whether he was any more active than Mr. Drury in furthering this building project, but he was certainly active, doing the best he could, I think I never saw Larson's subscription

(Testimony of J. E. Chilberg.)

until to-day. If I had been at that meeting, I would have signed that subscriptions and I would have qualified as a director. I am unwilling to commit myself on the plans that other men's minds have laid in my absence. Mr. Larson was doing these things and these gentlemen over here, and I was not; in fact, I was not even in Seattle, but very little at that time. I executed these articles without doubt, and had I been at the meeting, I would have signed up and had my share of the stock.

Referring to Exhibit 177, dated November 7, 1919, from Metropolitan Life Insurance Company, containing a proposition to loan \$600,000, I cannot tell who put it in to the mind of the officer of the corporation who wrote that letter, Mr. Walter E. Stabler, to address it to the Scandinavian-American Building Company which did not exist at that time. Mr. Stabler is a very able business man and manages the mortgage loans for that great big company, and I am only guessing at it, but the probability is that he was informed that such a corporation was to be formed for this purpose. I never saw Mr. Stabler when I [879] was with Mr. Larson in New York, nor was the loan consummated at that time. I think it was later consummated. I do not know whether there were other letters on that subject. [880]

The signatures appearing on the note marked Exhibit No. 243 of the signatures of myself and my wife, and the note was delivered to the Penn Mutual Life Insurance Company with the mort-



(Testimony of J. E. Chilberg.)

gage, which is marked Exhibit No. 242, which is the original mortgage.

Exhibit No. 242 is the original mortgage dated September 2, 1910, signed by J. E. Chilberg and Anna M. Chilberg, his wife, covering Lots 11 and 12 in block 1003, Map of New Tacoma, to secure the sum of \$100,000. The endorsement on the back thereof, shows that it was filed with the Auditor of Pierce County, Washington, September 23, 1910, fee number 324812. It is the original of Exhibit 326, heretofore set forth in full.

**Receiver's Exhibit No. 243.**

**FIRST MORTGAGE NOTE.**

No. 622 \$100,000.00

Tacoma, Washington, September 2d, A.D. 1910.

Without grace, for value received, we, jointly and severally, as principals, promise to pay to the order of

Penn Mutual Life Insurance Company, of  
Philadelphia,

the principal sum of one hundred thousand dollars with interest thereon from the date hereof until maturity at the rate of 5 per cent per annum, and from maturity until paid at the rate of twelve per cent per annum, payable semi-annually, on the 1st days of March and September in each year, according to the tenor of ten coupon interest notes of even date herewith and hereto attached, both principal and interest payable only in United States gold coin, of the present standard of weight and fineness, at the office of Penn Mutual Life Insur-

ance Company, at Philadelphia, Penna., with New York exchange.

If any default shall be made in the payment of the principal or interest hereof, or any part thereof, as above provided, when the same shall become due or payable, or if any default shall be made in the performance of any of the agreements or provisions contained in that certain mortgage made, executed, and delivered to secure the payment of this note, time and the strict performance of all and singular the agreements and provisions contained in this note, and in said interest notes, and in said mortgage being agreed to be material and of the essence of the same, then said principal sum hereof and all accrued interest and all sums due or payable under said mortgage shall, at the option of the holder hereof, thereupon and without any notice or demand become at once due and payable, with interest thereon from said date until fully paid at the rate of twelve [881] per cent per annum.

EXHIBIT 243 (Continued).

No waiver by the holder hereof of any default on the part of the makers hereof or of any person or persons liable or the payment hereof in the performance of any of the terms or provisions of this note, or any of said interest notes, or of said mortgage shall affect or impair the full force of said terms or provisions as to other, different or future matters, acts or transactions. All parties to this note, and each of them including makers, endorsers, sureties, guarantors, and all persons in any manner liable for the payment of the same, or any part

thereof, including interest or of the amounts due under said mortgage, hereby waive presentment or demand for payment, protest, notice of nonpayment, and notice of any default whereby this note may become or may be declared to be at once due or payable, and hereby expressly waive any release or discharge from any extension of the time of payment hereof, or from any other cause.

In case any default is made in the performance of any of the terms or provisions of this note, or of any of said interest notes, or of said mortgage, and this note is placed in the hands of an attorney for collection, the makers hereof and all said parties above referred to, jointly and severally promise to pay five per cent, of the amount due as an attorney fee, if paid without suit, and if suit shall be commenced then said makers, and said parties, jointly and severally agree to pay ten per cent of the amount due as an attorney fee, and agree that in case suit shall be prosecuted to judgment, said attorney fee, equal to ten per cent of the amount then due, shall be included in said judgment, and said makers and said parties hereby jointly and severally agree that said sums are reasonable. Any judgment rendered on this note shall bear interest at the rate of ten per cent per annum from the date thereof until fully paid. Said makers and said parties above referred to jointly and severally agree that in the event of a suit to enforce the collection of this note, or of any of said interest notes, or to procure a foreclosure of said mortgage, a deficiency judgment may be entered against them jointly and severally, and may

be satisfied out of any property belonging to them, or to any of them. Said makers and said parties above referred to jointly and severally agree to pay, before delinquent, any and all taxes that may be assessed against said note, said interest notes, or said mortgage, or against the holder of the same on account thereof.

(Signed) J. E. CHILBERG.

(Signed) ANNA M. CHILBERG. [882]

EXHIBIT 243 (Continued).

Endorsed on the back thereof is the following:

Pay to the order of F. P. Haskell, Jr., as special deputy Bank Commissioner in charge of liquidation of Scandinavian American Bank of Tacoma, without recourse on The Penn Mutual Life Insurance Company in any event.

THE PENN MUTUAL LIFE INSUR-  
ANCE CO.

(Signed by) SYDNEY A. SMITH,

Secretary.

8/30/16 Received on account of principal of within  
notes—\$10,000.00.

8/29/17 Received on account of principal of within  
note—\$10,000.00.

9/ 3/18 Received on account of principal of within  
note—\$ 5,000.00.

9/ 2/19 Received on account of principal of within  
note—\$ 5,000.00. [883]

**Testimony of James R. Thompson, for the Receiver**

JAMES R. THOMPSON, a witness called by the Receiver, being duly sworn, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

My name is James R. Thompson. I live at Steilacoom Lake, a suburb of Tacoma. At one time I was connected with the Scandinavian-American Bank of Tacoma. I was director and stockholder during the year 1919. I resigned some time in December. I gave a written resignation some time in December, 1919. I was in the hospital at the time and did not keep a copy of it. I had an attack of heart failure, and since that time was not officially connected with the bank in any shape or form. I remember being in the East and meeting Mr. Ole Larson, vice-president of the bank at that time. It was September 1919. I met Mr. Williamson and Mr. Drury and Mr. Larson at the Plaza Hotel, and discussed with them the building proposition of the Scandinavian-American Bank. My brother was a director of the Metropolitan Life Insurance Company and I told him the situation of the building, its desirability as real estate, and really that was about all the connection I had in regard to the loan. Merely informed him as to that, as to the value of the corner. I did not meet Mr. Walter Stabler, the comptroller. I had a talk with Mr. Larson as to whether or not any of the funds of the bank were



(Testimony of James R. Thompson.)

to be used in the construction of this new building of the Scandinavian-American Building Company. Some time during the summer of 1919 I wished to have an assurance by Mr. Larson that the building had been financed or would be financed, would be financed, rather than had been financed,—independently of the bank, and that none of the bank's funds would be used. That impression was carried in my mind all the [884] time I was a director of the bank, that the financing of the new building would be done outside of the bank. I continued as a stockholder during 1920, but I did not know anything of the affairs of the concern, I was very sick. During that year I did not know practically anything that was going on. I never did qualify or accept the position of trustee of the Scandinavian-American Building Company. I never knew I was a director until I read it in the paper long afterwards, after the bank had closed I found it out, during 1921 I read it. I did not attend any meetings, or have any information that O. S. Larson was authorized by the bank to sign for \$199,600 worth of capital stock of the building company, never heard of it. I would not be in a position to answer the question as to whether I ever heard that the Scandinavian-American Building stock was bought by the Scandinavian-American Bank, because I did not keep track of anything during 1920 at all. I was very sick. In fact, I was stricken in November, 1919, and kept business out of my mind in every way, shape and form.

(Testimony of James R. Thompson.)

Cross-examination.

(By Mr. LANGHORNE.)

I returned from New York the latter part of September, 1919. I knew at that time that the bank contemplated the erection of a building. It was my impression when I was in New York that this new building was to be finished without debt of the bank. Mr. Larson told me that. I could not tell you positively whether Mr. Drury was present. I think Mr. Williamson was present when I asked the direct question of Mr. Larson, in Tacoma. At that time I did not know what the building would cost, I had no idea. There was a plan submitted in the New York meeting from Strauss & Company for financing the building. There was present at that meeting, [884½] Mr. Williamson, Mr. Drury Mr. Larson, Mr. Webber, Mr. Simpson and myself. That plan was turned down unanimously, not any disagreement of any kind whatever. My remembrance of that occasion was that the terms were read and, discussed and pronounced preposterous and turned down and there was no division of opinion on the part of any member present. It was a larger sum of money than the Metropolitan loan, I think. Mr. Webber furnished an estimate for a fifteen-story building and a twelve-story building, and I heard the discussion as to the cost. It was largely in excess of \$600,000. The actual fact is these plans were all preliminary. When it came to the letting of their building plans, or the actual plans, I do not know a thing about it. The plans I saw were preliminary. They were not final.

(Testimony of James R. Thompson.)

Cross-examination.

(By Mr. LUND.)

August 17, 1920, I was not present at the meeting of the Building Company trustees, as recited in the minutes; I was sick at home.

In reference to the talk with Mr. Larson, I am only giving you my impression that four or five different conversations placed firmly in my mind that Mr. Larson's schemes of finance contemplated erecting this building without taking any money of the bank for doing it, that is erecting the building on borrowed money. I did not inquire as to exactly how he proposed to accomplish this. He did not fully explain the method, except this first plan of Strauss was really the only deal I heard and it was turned down. [885]

Direct Examination.

(By Mr. OAKLEY.)

I attempted to find out how they were going to finance this building, they not having any of the bank's money in there. One of my hazy impressions that was given to me was that there would be a lease with the Scandinavian-American Bank which would take care of the loan that they would get from the outside. I got that impression from Mr. Larson. I am satisfied that Mr. Larson did run the whole matter; nobody else had much to do with it. I resigned in 1919, and in December. Up to that time he was running it. [886]

**Testimony of J. V. Sheldon, for Tacoma Millwork Supply Company.**

J. V. SHELDON, a witness called by the Tacoma Millwork Supply Company, testified as follows:

Direct Examination.

I was secretary of the Building Company and as secretary I quite frequently conferred with Mr. Drury and Mr. Larson about the building. In transferring this property from the Bank to the Building Company, I believe there was an agreement to issue \$750,000 of second mortgage bonds. When the contracts were signed up, the \$600.00 was to be used in completing the building; the commitment we had provided that the \$600,000 was for final completion of the building. I believe that later on the mortgage was made to Simpson to take and raise funds and the Metropolitan in the meantime agreed to accept the assignment of Mr. Simpson. (Statement of Facts, p. 873) The \$600,000 I believe was a first mortgage. I did not know right then how the Penn Mutual mortgage was going to be handled; I do not know that out of the second mortgage funds we were to pay this Penn Mutual mortgage.

Direct Examination.

(By Mr. OAKLEY.)

I first became a stockholder of the Scandinavian-American Bank of Tacoma in January, 1920. Prior to that time I was living at Nome, Alaska, where I was engaged in the banking business. I bought

(Testimony of J. V. Sheldon.)

100 shares of the new issue of the stock of this paying \$125.00 per share, par value \$100.00. Prior to that time I had owned ten shares of the stock of this bank, and afterwards sold them before I bought the 100 shares. I came there with a promise of a position in the bank, from Mr. Larson and Mr. Lindeberg of San Francisco, and it was upon that promise that I bought the stock. I was elected vice-president in January, 1920. I went to Nome and returned from Nome to Tacoma in August, and came back to the bank in September 1919, and [887] continued thru the year. I was assistant cashier in 1919, and then made vice-president on January 17th, 1920, and held that position up to the time the bank closed; I was also one of the trustees of the bank from January 17, 1920. During the year 1920 the trustees of the bank were Mr. Larson, Mr. Lindberg, Mr. Frank Lamborn, Dean Johnson, Charles Drury, George Williamson, and myself. Mr. Dean Johnson became connected with the bank in January, 1920. He held the position of vice-president and became a stockholder. He left Tacoma in December, 1920, whether he resigned or not I do not know. In my capacity as vice-president I handled the new accounts that came in and worked generally with Mr. Ogden on the front counter, which consisted of passing upon loans, taking up matters of credit, just the general work of the front counter. I have been in the banking business since 1907, and was familiar with the details of the banking business at that time (1920).



(Testimony of J. V. Sheldon.)

I was familiar with the details in reference to the building of the building. The first knowledge I had in reference to that business was in the spring of 1919, before I left Nome, when I was told by Mr. Larson that a building was to be built, costing seven or eight hundred thousand dollars; that could all be financed outside of the bank. When I came back in the fall of 1919 they were going to go ahead with the building. I was secretary of the building company. I had a conversation with Mr. Larson in reference to financing this building in the spring of 1920. I was told that the building would be financed entirely outside of the bank funds; that the plan was to place a first mortgage upon the property, they had a commitment from the Metropolitan Life Insurance Company for \$600,000 second mortgage bonds were to be issued for the difference between that and the cost of the building, that the second mortgage bonds were to be sold; that the Seattle Scandinavian-American Bank was to carry a substantial [888] portion; a portion of these bonds were to be given to the directors, and an attempt was to be made to sell some, and it might be possible that the bank would have to carry a small amount of them, I first learned that the bank had advanced money to the building company in April, 1920, when I executed a note as secretary of the Scandinavian-American Building Company which was turned into the bank, and I knew it was in the files. I think the amount of that note was authorized by the Loan Committee. I made com-

(Testimony of J. V. Sheldon.)

plaint about the advancing of the bank's money to the credit of the building company, to Mr. Larson and Mr. Drury, I didn't hear any of the other directors make complaint to Mr. Larson. I had a conversation with Mr. Larson and other directors of the Bank in reference to the bank taking the assignment of the \$600,000 mortgage, a short time prior to Oct. 7th, 1920. Mr. Drury and myself had discussed the matter. I discussed it with Dean Johnson, I do not recall discussing it with Mr. Larson until just prior to his departure for the east, at which time he took those papers east with him and told me he was going to get an assignment of the mortgage from Mr. Simpson to the bank; the purpose of that assignment was for the protection of the bank for moneys that they had advanced. That was the statement of Mr. Larson. That question was not discussed at a meeting of the board of trustees, but between ourselves as individuals or for instance Mr. Drury and I had talked of it and Mr. Dean Johnson had talked of it. In fact Mr. Drury is the man that came to me and first mentioned the matter and he was the one that insisted on taking up the assignment.

“(By the COURT.)

Q. You heard these minutes of 190 that recited Mr. Thompson's being present?

A. Yes, sir.

Q. At that meeting?

A. Yes, sir. [889]

(Testimony of J. V. Sheldon.)

Q. Were those minutes kept in your handwriting?

A. I wonder if I can see them, please. Are they typewritten or signed by myself?

Minute-book of the Building Company was exhibited to the witness.

Q. Have you any explanation as to how his name came to be there?

A. I am under the impression, in fact I am pretty sure, that I was not present at this meeting; but that these minutes were handed to me afterwards and I signed them."

**Receiver's Exhibit No. 248.**

(Notation by Witness.)

September 24th, 1920.

Mortgage—Building Company to Simpson.

Declaration of Trust, Simpson to Building Company.

Power of Attorney, Building Company to Simpson.

Note, \$600,000 Building Company to Simpson dated 3/10/20.

Above given O. S. L. 9/24/20—S.

(On Scandinavian-American Bank letter-head attached thereto:)

Received of J. V. Sheldon, Secretary of the Scandinavian-American Building Company the following documents:

1. Mortgage of the Scandinavian-American Building Company in favor of G. Wallace Simpson in the sum of \$600,000 dated March 10, 1920.

(Testimony of J. V. Sheldon.)

2. Mortgage note of even date and tenor.

3. Declaration of trust executed by G. Wallace Simpson dated on the 17th day of August, 1920.

4. Copy of power of attorney from Scandinavian-American Building Company to G. Wallace Simpson, dated August 17th, 1920.

(Signed) O. S. LARSON.

(Scandinavian-American letter-head attached thereto.) [890]

6/28/1920.

#### MEMORANDUM FOR MR. SHELDON:

Where are the original papers in the Bank Building case:

1st. The mortgage to G. Wallace Simpson which was put of record at the Court house on the approval of the attorneys for the Metropolitan Life Insurance Company.

2d. The mortgage note which was executed in connection with that mortgage drawn by Mr. Oldham, representing the Insurance Company.

I wish you would keep these papers in a safe place ready to be delivered when the funds are to be turned over.

Very sincerely yours,

(Signed) O. S. LARSON.

One of these is a memorandum addressed to me by Mr. Larson, under date of June 28th; the other is a receipt to me from Mr. Larson, under date of September 24th, referring to the building company papers. The paper on top is a memorandum that I made of the same thing. That refers to this

(Testimony of J. V. Sheldon.)

letter, this receipt of September 24th. I had possession of these instruments mentioned in the letter and kept them in what we call a special file in the vaults at the bank.

Cross-examination.

(By Mr. LANGHORNE.)

I had possession of that Simpson mortgage in June, 1920; I delivered those papers to Mr. Larson at that time. He told me he was going to take them east and get an assignment from Mr. Simpson to the Bank. Subsequently that assignment came into the hands of the bank. I think I had seen it. The records of the note department show that the assignment was brought into the bank as security for that money. Those records are in evidence. Defendant's Exhibit 187, being page 233, under date of December 9th, 1920, \$200,000 item on the bank of which are certain writings, shows the collateral or [891] security for the note that is set forth on the other side; note of the Scandinavian-American Building Company dated March 10th, 1920, \$600,000 to G. Wallace Simpson, etc. That part of it (indicating) is in the handwriting of Mr. Samuel Morse; also the two last are in the handwriting of Mr. Geiger, Mr. Morse being the note teller. I do not know the exact amount, but the records will show, how much the building company was indebted to Scandinavian-American Bank in October 7th, 1920. The paper handed me is a note of the Scandinavian-American Building Company in favor of the Scan-



(Testimony of J. V. Sheldon.)

dinavian-American Bank of Tacoma \$363,825.00 made up of the principal sum of \$350,000 together with interest due from and to certain dates. That memorandum was attached to the note while in my possession, said memorandum reading as follows:

“Amount of bonds to be delivered pursuant to resolution and agreement, February 10th, 1920, \$350,000, interest 6% from January 10th, 1920, to October 10th, 1920, \$13,825.”

The bank deeded the property to the building company under agreement that second mortgage bonds would be delivered to the amount of \$350,000. The agreement was not carried out, the bank did not have anything to show. They deeded the property away. We executed this note to protect the bank as far as we could. This note was kept among my papers on my desk. We had little trays that we had various papers in on our desks. These were moved into the vault each night. That note was in my tray. The note was dated October 7th, 1920. The note never passed from my possession into the possession of the note teller, no records were made of the note on the bank's books.

Redirect Examination.

(By Mr. OAKLEY.)

I remember an item of June 25th, 1920, being in reference to a stock transaction of the Scandinavian-American Building Company. I first learned of that transaction after June 25th. On June 25th, I believe I was in Portland. I either

(Testimony of J. V. Sheldon.)

came from Portland or the first [892] time I found that the building had obtained a credit, I wanted to know where the credit had come from and I proceeded to look it up and that is the entry I found. I mentioned it to Mr. Larson afterwards. As a trustee of the bank I was not at any time consulted in reference to the purchase of this stock of the Scandinavian-American Building Company, and had no knowledge of that transaction prior to the time I discovered it myself a few days after June 25th, 1920.

Cross-examination.

(By Mr. FLICK.)

After discovering it I did not make any effort to rectify it by calling a board meeting. I do not think the matter was taken up officially. It may have been discussed. There was nothing done about it. I believe there was an agreement between the building company and the bank for the delivery of the bonds. I think it is here in evidence, Exhibit 184, bears my signature, and the bank at all times had this exhibit, and the certificate provides for six per cent interest, that is why I computed the interest on this \$350,000 at 6%. The note and attached certificate, being Exhibit 249, and Exhibit 184 bear upon exactly the same thing.

**Receiver's Exhibit No. 249.**

(Memorandum Attached to Note.)

Amount of bonds to be delivered pursuant to resolution and agreement of Febru- ary 10, 1920 .....	\$350,000
Interest at 6% from February 10, 1920 to October 7, 1920 .....	13,825
Total .....	\$363,825
	<hr/>
\$363,825	

Tacoma, Washington, October 7th, 1920.

On demand after date, without grace, at 12 o'clock noon, for value received Scandinavian-American Building Company, a corporation, promises to pay to the order of the Scandinavian-American Bank of Tacoma, at its banking house in the city of Tacoma, the sum of Three hundred sixty-three thousand eight hundred twenty-five Dollars in Gold Coin of the United States of present standard weight and fineness, with interest thereon at the rate of six per [893] cent per annum from date until paid. If interest is not paid when due, or if principal is not paid at maturity, then the interest and principal to draw interest from maturity hereof until paid at the rate of twelve (12) per cent per annum. In case default is made in the payment of this note and it shall be placed in an attorney's hands for collection, we agree to pay five per cent of the amount then due as attorney's fees if paid before suit is commenced; but if suit be commenced to collect

this note or any part thereof, we agree to pay ten per cent of the amount then due as attorney's fees; and in case suit is prosecuted to judgment, we agree to pay as attorney's fees such amount as the Court deems reasonable, and such amount shall be included in the judgment, and such judgment shall bear interest at the rate of ten per cent per annum.

All parties to this note, including guarantors, sureties and endorsers, hereby severally waive presentment, protest, notice of nonpayment, or any release or discharge arising from any extension of time of payment or from any other cause.

IN WITNESS WHEREOF, the President and secretary of said corporation, under authority of a resolution duly adopted by its Board of Trustees have hereunto signed the name of the corporation and affixed its corporate seal.

SCANDINAVIAN-AMERICAN BUILD-  
ING COMPANY,

(Seal)

By CHARLES DRURY, Pres.

By J. V. SHELDON, Sec'y.

The following revenue stamps, with cancellations thereof, appear on the back of the above note:

\$50.00, S A B Co. Oct. 7, 1920.

\$25.00, S A B Co. Oct. 7, 1920.

\$60.00, S A B Co. Oct. 7, 1920.

\$ 2.00, S A B Co. Oct. 7, 1920.

\$10.00, S A B Co. Oct. 7, 1920.

When Larson went east he said he was taking these papers east and would have a proper assign-

(Testimony of J. V. Sheldon.)

ment drawn up in favor of the bank, for the reason that the bank had advanced certain moneys and would have to advance some more, and this assignment was taken for the protection of the bank. The records show that they had advanced money at that time. The records show a purchase of this stock and the bank did not have the actual stock until December, 1920, it was not issued, but the books showed as early as June 25th, 1920, that the stock had been purchased. I considered that entry in advance to the Building Company myself, and I think there is some evidence of it in the way that appears. (Referring to cards.) There was some indebtedness owing by the Building Company to the bank September, 1920, possibly an [894] overdraft, but no note. As to why I did not carry this note in the records of the bank, the agreement to deliver the bonds had not been—in fact the bond issue had not been prepared, and nothing had been done about it, and Mr. Drury and I executed that note in favor of the bank. I did not carry it like any other records of the bank because I was not authorized to make any such entry on the books. Mr. Larson, I think, was away at the time. I took it up with other members with the idea of entering it on the records of the Bank. I do not know what they said. I referred particularly to getting it into the records of the bank, but I talked with Mr. Dean Johnson about it and stated I had such a note. The idea was that I looked upon it merely as a tentative thing to be substituted by the bonds in time,



(Testimony of J. V. Sheldon.)

but at that time, as I say, they had not gotten the bonds issued, and I did not know whether they would or not. I think I was present at the meeting of the board of December 10th when the question of collateralizing this \$600,000 mortgage was taken up and officially passed upon. There is not any notation of it here in the minutes of the bank, but I can tell you it was discussed at that meeting. No resolution was passed of any kind authorizing the adoption of that as collateral. There is nothing on the books in reference to that matter, it was discussed at the meeting of December 10th, however. There is no building company official record showing that this mortgage was allowed to be collateralized in that manner by the building company. There was no meeting where the majority of the trustees authorized the collateralizing of this note by the building company to my knowledge. [895]

Cross-Examination.

(By Mr. LANGHORNE.)

It was the original intention that the money under the Simpson mortgage was not to be obtained until the building was completed, but in September, 1920, that was not the intention, we had been promised repeatedly by Mr. Simpson before that time, that he would get us advances against that mortgage. I believe that the commitment says that we were not to get any money until the building was completed, but we were assured by Mr. Simpson that the mortgage would

(Testimony of J. V. Sheldon.)

be used. The commitment says; that, but that is not what Mr. Simpson and Mr. Webber assured us. I do not know how we were going to build this building without this \$600,000. I asked Mr. Larson that many times. It could not be built for \$600,000. We were going to get an advance of \$600,000, and when that was completed that was to be turned to the Metropolitan Life Insurance Company. There would be no bills when this building was finished. In the meantime the second mortgage bonds would be issued, and Larson told me that part of them had been placed with contractors, and the Seattle bank was to carry part of them, and the Tacoma bank a small portion. I took Mr. Larson's assurance that the building was to be financed entirely outside of the bank, and we left it to him and took his word for it. Afterwards I knew it was not being financed from the outside. At the time these contracts were being signed up I do not think any money had been expended at that time; I do not think there had been any call for any money at that time. I knew that the contractors were going to expend the money there and to supply materials, I knew that long prior to September 20th, 1920. The idea of having this mortgage assigned to the bank was simply to secure the bank for money that they were putting up, they were paying these bills as they went along. The directors of the Scandinavian-American Building Company never authorized me and Mr. Drury to sign this note of \$360,000. We

(Testimony of J. V. Sheldon.)

signed it and I kept it [896] in my desk from the time it was signed until the bank closed January 15th. I told Mr. Dean Johnson, one of the directors of the bank, I do not know whether I mentioned it to Mr. Larson or not. I testified that I knew what entry was made on June 25th, \$200,000 charged to stock and bond account. I am not sure that I was present when Mr. Larson made a subscription of \$199,600 worth of stock of the building company. That subscription to the capital stock of the building company was not completed until December, 1920. It was subscribed for by Larson but the stock was not issued.

I was not present at the bank at the time that the entry of \$200,000 got into the stock and bond account. All I know is that the entry was made at the direction of Mr. Larson. I mean the certificates of stock were not signed until December, 1920. I do not see anything in the minute-book to indicate that it was signed in December, 1920.

Mr. Simpson gave us assurance on August 17th, at the time the power of attorney was executed that he was going to get a loan from Strauss & Co. for \$1,250,000. I think that I signed all of the notes of the Building Company and knew of all of the overdrafts of that company.

Cross-examination.

(By Mr. STILES.)

Exhibit No. 184 bears my signature as secretary of the building company. (Ab. 69.)

(Testimony of J. V. Sheldon.)

“Q. Now, will you state what authority you had, you and Mr. Drury, to sign that paper?

A. I do not know that there is any authority, Judge Stiles, that is in the shape of a resolution.

Q. Isn't it a fact that the board of directors of the bank passed their resolution practically ordering you and Mr. Drury to execute this agreement? [897]

A. No, I think there is a resolution passed in the bank minutes.

Q. Didn't you do it simply because the bank directors had passed that resolution?

A. No, I could not say that.

Q. Doesn't this recite the fact that the directors of the Scandinavian-American Bank of Tacoma had passed a resolution and that the Scandinavian-American Building Company agreed to execute, etc.? Had the Scandinavian-American Building Company agreed to do anything of the kind by a meeting of its board of directors?

A. I do not believe that is in its minutes.

Q. Was there any such meeting?

A. That is what I say, I do not think there was.

Cross-examination.

(By Mr. FLICK.)

There was no board meeting of the building company except as shown in the book. The matter of the bank's using this \$600,000 mortgage as collateral was undoubtedly discussed. That is, Mr. Drury and I, who were also officers of the bank, talked it over several times with Dean Johnson.

(Testimony of J. V. Sheldon.)

There was no board meeting of the building company called and no board meeting of the bank called for the purpose of authorizing the collateralization of this mortgage. (Statement of Facts, pp. 905-906).

Cross-examination.

(By Mr. LUND.)

I believe the Simpson note and mortgage and trust agreement were in a special file in the vault of the bank on June 28th, and am pretty sure that they were in our possession all the time until September 24. I had knowledge a few days after the event of the entry in June of the purchase by the bank of the stock and the credit of the \$200,000. I and Mr. Ogden signed all the checks of the building company and I knew that we were drawing against the \$200,000 which was credited on account of the stock, and that from time to [898] time the building company had overdrafts, and as an officer of the bank and of the building company knew that they were covered by note. Mr. Larson attended to this and when he was not there the overdrafts probably stood until he returned. I signed all of the notes that were made at his direction. I cannot say whether I signed any note when Mr. Larson was not present. I knew from time to time the amount of overdrafts that was carried in the name of the Scandinavian-American Building Company, that information being placed on my desk the morning after the overdraft occurred.



**Testimony of George G. Williamson, for Tacoma  
Millwork Supply Company (Recalled).**

GEORGE G. WILLIAMSON, a witness, being recalled, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

In reference to the testimony of Mr. Larson that he consulted me in reference to the issuing of the stock of the Scandinavian-American Building Company to the Scandinavian-American Bank, and that I advised him that it was all right, I will state that I did not have any conversation with Mr. Larson in reference to the issuance of any stock. I did not know until after the 8th of January, 1921, that the Scandinavian-American Bank had any stock of the building company. I fix that date because I left Berkeley, California, on the 6th of January, and I could not have arrived here until the 8th, Mr. Sheldon came into the office and wanted me to take an endorsement on a certificate of stock of the building company that had been issued in my name, and I signed it, he stated to me that the bank examiner had examined the bank in December and found that the bank was carrying \$200,000 in stocks and bonds represented by the building company's stocks. The stock was not there and they issued the stock and got all of it but the one share I had. I endorsed it. That was the first time [899] I knew the Scandinavian-American Bank had anything to do with any building company stock di-

(Testimony of George W. Williamson.)

rectly or indirectly. The matter had never been mentioned to me by Mr. Larson or anybody else up to that time. It was absolutely represented at the inception that Mr. Larson was subscribing for all of that stock except one share each for the other directors. Mr. Larson was to get the money for the purchase of that stock he was subscribing for in his own name, but I do not suppose anybody, at least I did not think that Mr. Larson was going to furnish \$200,000, but he said that he had arranged that.

In reference to the claim that Mr. Larson in company with Mr. Drury and Dean Johnson had conferences with me in my office when it was agreed that the bank should finance the building company by advancing money, and it should be secured for the advances by the balance of the \$750,000 second mortgage bonds left on hand, I will say that, no such meeting of that kind was ever held at a time I was present. If there had been, they certainly would not have had any consent from me to that proposition. Mr. Larson at no time took up with me the question of advancing moneys from the Bank for the purpose of financing the building company's operations. I took it up with him once, and found out that a \$25,000 loan had been made by the bank to the building company, and I told him right then and there I was going to resign, and I did resign. That is the only time I ever discussed it with Mr. Larson, except some time afterwards, he asked me

(Testimony of George W. Williamson.)

if I would not withdraw my resignation and I told him absolutely no.

Cross-examination.

(By Mr. FLICK.)

I know Mr. Freeman's handwriting. Referring to Exhibit 195 the handwriting here, Scandinavian-American Building Company capital stock \$200,000, incorporated under the laws of the State of Washington, the name of Charles Drury, and "one" and "they are," and [900] "Scandinavian-American Building Company" look like Mr. Freeman's handwriting. This certificate shows that Mr. Freeman filled in the words "Larson." Referring to Exhibit 250 I think the name of Scandinavian-American Building Company Capital stock \$200,000, incorporated under the laws of the State of Washington, and other handwriting in there is the handwriting of Mr. Freeman, showing 1,996 shares.

**Exhibit No. 250.**

**(Flick.)**

Scandinavian-American Building Company.

No. 6.

Shares 1996.

Capital \$200,000.00.

Incorporated Under the Laws of Washington.

THIS CERTIFIES THAT Scandinavian-American Bank of Tacoma is the owner of Nineteen Hundred Ninety-six shares of the capital stock of Scandinavian-American Building Company transferable only on the Books of the Corporation in

(Testimony of George W. Williamson.)

person or by Attorney on surrender of this Certificate properly endorsed.

IN WITNESS WHEREOF, the duly authorized officers of this Corporation have hereunto subscribed their names and caused the corporate seal to be hereto affixed this 25th day of June, A. D. 1920.

[Corporation Seal]

(Signed) J. V. SHELDON,  
Sec'y.

(Signed) CHARLES DRURY,  
Pres. [901]

Cross-examination.

(By Mr. LUND.)

I was present on February 10th or January 10th, 1920, at a meeting of the board of trustees of the bank, at which the proposition of transferring the title to this property to the Building Company was taken up. I knew very well the representations made with respect to that. I think the resolutions were prepared by our office. I do not think the other part of it was (referring to pages 417 to 421, exhibit 191 or exhibit 183).

**Testimony of Frank M. Lamborn, for the Receiver.**

FRANK M. LAMBORN, a witness called by the Receiver, being duly sworn, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I am State Printer and live at Olympia; have been a stockholder in the Scandinavian-American

(Testimony of Frank M. Lamborn.)

Bank about 20 months from the time I purchased stock until the bank closed. I was director during 1920 up until the time of the closing of the bank. I first found that funds of the Scandinavian-American Bank were being used in this building late in the fall of 1920. I asked Mr. Larson upon one or two occasions about the finances, how it was getting along, and he said it was all attended to and had been financed, no need of worry, the finances were taken care of. I did not ask him specifically as to the use of the funds of the bank in this building, that was not discussed at all. It was not necessary, because he said he had financed it and the money was ready in New York. The loaning of the bank's money for the construction of the building was not brought to my attention until late in the fall, I think it was at the November meeting, but it was not up for any formal or official discussion. It was discussed in an informal way. There was not a full meeting of the board. Something [902] mentioned about the advances being made to the building company, and it was brought out that the loan was only temporary, until the money of the mortgage was forthcoming. Someone called it a credit memo. That is the way it was brought out and I also think Mr. Drury mentioned at the time that any advances made at the time were absolutely safe and covered by mortgage or bonds, I cannot recall which. I cannot say that I know of the bank purchasing \$200,000 worth of the capital stock of the Scandinavian-American Building Company; I



(Testimony of Frank M. Lamborn.)

am not sure I ever knew of it. My consent was never asked for the purchase of this stock.

Cross-examination.

(By Mr. FLICK.)

Mr. Larson was manager and president of the bank. I did not have anything to do with the building company at all. It was left in Mr. Larson's hands to make any advances, he would naturally handle those things.

Cross-examination.

(By Mr. METZGER.)

I did not have any knowledge of any advances made by the bank to the building company until late in the fall of 1920. I could not say how many meetings of the board of trustees I attended during 1920. I could not say that I was present at the meeting of the directors on Friday, April 9th, as recited in the minutes on page 431 of Exhibit 183. I do not recall the facts recited in those minutes as "it was moved by Mr. Johnson, seconded by Mr. Lindberg, and carried that a loan of \$25,000 to the Scandinavian-American Building Company be authorized." I would not say that that action was not taken. I would not doubt it because it is a matter of record. I recall being present at a meeting of the board of directors of the bank held Friday, July 23d, when the resignation of Mr. Williamson was received. It was not acted upon. Mr. Larson said he would see Williamson about it. At the meetings I attended the loans that had been

(Testimony of Frank M. Lamborn.)

made were submitted [903] to the directors for approval. I would not dispute the record as it appears on page 437 of Exhibit 183, reciting that I was present at that time, but it does not serve to refresh my recollection as to having seen the record of any loans made by the bank to the building company until late in the fall. The loans, new loans and renewals, consisting of several sheets of typewritten papers, were passed around to every director and gone over hurriedly and turned back to the secretary of the meeting again. I recall being present at a meeting of the board of directors of the bank held Friday, July 23d, when the resignation of Mr. George Johnson was presented.

I knew that the building company had entered into a contract with the McClintic-Marshall Company to furnish steel to the building, but not as a director of the bank. It came to me while I was a director but not as a director. I knew of it after the building was in the course of construction, it was last year, 1920, I think it was before June. I could not say whether it was before they started getting material here. [904]

**Testimony of Claude P. Hay, for the Receiver.**

CLAUDE P. HAY, deputy supervisor of banking, being called by the Receiver, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I am deputy supervisor of banking department

(Testimony of Claude P. Hay.)

of the State of Washington and have been connected with the banking department off and on since 1908. After March, 1920, I was Bank Commissioner, and prior to that I had been examiner. Since 1908 when I originally started in. I was State Bank commissioner from March 1st, 1920, to April first of this year, when the banking laws of this state were changed and I became deputy supervisor of banks, Mr. J. P. Duke being appointed supervisor.

I could not say the dates, but I participated in two examinations of the Scandinavian-American Bank of Tacoma while Mr. Larson was vice-president of the bank and while I was bank examiner. I think I made an examination about the first of January, 1920. In reference to conversation with Mr. Larson in regard to the bank building, I do not remember now to what extent he had gone ahead with the organization of this building company, or putting up the building, but I know he showed me some plans and we discussed the matter. I had some discussion with him in reference to using the bank money for the purpose. The matter of financing the organization of this building had been discussed with my predecessor L. H. Moore, I would not want to say whether it was by Larson or not. Mr. Larson told me that Mr. Moore would not have any occasion any more, to worry any more about the building, as he had it financed in New York, and not one nickel of the bank's money would be put into it or something to that effect; I think as a matter of fact those were about the words. I wrote

(Testimony of Claude P. Hay.)

Exhibit 219 dated June 21st, 1920. I cannot recall just this moment [905] what brought the letter about at that time unless I had heard some comments made that the bank was to pay to this building, and used its own funds, or something of that sort, and just as a matter of record I wrote the letter at that time. I had not made an examination of the bank at that time. There were calls made periodically when the bank would make a condensed statement to the department. I had regular reports of that nature from the examiners working under me. That letter refers to a meeting that we had in their building, that is at their old location. I do not know the date. I had called for the purpose of discussing with Mr. Larson certain conditions in connection with the bank; and found Mr. Larson was away, and it so happened that the board was to meet at their regular meeting day and I was asked to meet with them which I did. As I recall, there was no quorum present and the meeting was informal, but at that meeting I made it very plain to them that none of the bank's funds were to be used in the construction of the building. Mr. Drury, Mr. Sheldon and Mr. Williamson were there. Mr. Larson was not there. Mr. Dean Johnson was there and Mr. Ogden the cashier. It was probably a few days preceding the date of that letter. I do not remember writing Exhibit 220, being a letter under date of August 23, 1920. I do not know there was such a letter written. I should say it was my letter though I had forgotten it.



(Testimony of Claude P. Hay.)

In reference to Exhibit 221, letter of November 12, 1920, Mr. Larson and Mr. Drury came to Olympia for the purpose of obtaining permission to carry that building at an amount in excess of the amount prescribed by law, that is 20% of the capital, surplus and undivided profits. I had a discussion with them on that subject. On January 8th, Saturday afternoon, week before the bank closed, I had a meeting with Larson, Drury, Sheldon, and I think Lamborn. I called the meeting for the purpose of requiring the board to remove certain [906] objectionable assets from the bank, and to generally discuss the results of the examination that had been made by our examiner. I had some discussion with them at that time in reference to the bank using any of the funds for the construction of this building. The examination had disclosed, in spite of my instructions, the bank had, one way or another, invested in that building, and it was my purpose in having this conference to determine whether or not the bank would sustain any loss in connection with the building, as well as other items which might come up, which might have appeared in the report. I investigated the status of the building company and the building company's stock from the real estate and various loans and attempted to determine just what their worth was, and how they were secured. The members of the board admitted that they had made these advances contrary to my instructions. My examination showed that this loan had been made to the building



(Testimony of Claude P. Hay.)

company by the bank. Mr. Larson was at the January 8th meeting, I am sure, and that was the meeting that he tendered his resignation to me and I refused to accept it. He was present and was taking part in the conversation where I was told about this security.

(Question read as follows:) You may state whether or not at that meeting you called the attention of the directors of this bank and Mr. Larson, the president of the bank, to the money that had been advanced by the bank to the building company, contrary to your orders, and Mr. Larson or Mr. Drury, chairman of the finance committee, did either of those two gentlemen tell you, in the presence of those you stated were there, of any security the bank had taken to protect itself from those advances so made?

WITNESS.—To the first part of the question my answer would be that I did call their attention to the amount of money which loaned [907] directly and indirectly to the building company. To the second part of it they did make the statement, to my knowledge, they represented that the money so advanced was properly secured by a mortgage of \$600,000. I do not remember just what conversation there was in regard to it. I do not think I was at the bank between January 8th and the day the bank finally closed, January 15th, but I was at the offices over the bank. During that time I had meetings with members of the Clearing-house here in Tacoma, and also in Seattle, trying to save the

(Testimony of Claude P. Hay.)

bank. On January 15th, 1921, I ordered the bank closed and appointed Mr. Forbes P. Haskell, Jr., as special commissioner here for the liquidation of this bank.

Cross-examination.

(By Mr. LANGHORNE.)

I do not recall when I first learned about the mortgage of \$600,000, but I presume that was disclosed to me by the examination that was made in December. I do not think I ever had any information regarding it prior to that time, and if no such report was made I got the information from the statements that were made to me at the January 8th meeting. I knew what the approximate cost of the building would be—somewhere around a million dollars, and knew that they had only a mortgage for \$600,000, wherewith to finance a building. It did occur to me that it would take some \$400,000 more to finance the building, but there was a second mortgage to secure the bond issue, which was to be floated, which was to take care of the balance of it. I never saw that mortgage or any document or instrument of any kind. That was simply information that was given to me by Mr. Duryr, and Mr. Larson was with him. After looking at Exhibit 209, letter [908] under date of June 21, 1920, I do not think I had any knowledge at that time of their doing anything, investing any money in connection with the finances of that building. I think I simply warned them, warned them against doing it. They had \$260,000 or \$280,000 invested in the

(Testimony of Claude P. Hay.)

old building, in the site. I did have an impression or suspicion that they were using the bank's funds as advances to the building, but Mr. Drury told me positively, no, I think he said not a sou marquee of the bank's money was used in that building. Somebody exhibited some letters from some eastern concern, I do not recall whether it was Strauss and Company, concerning the financing of the building, but somebody who was apparently arranging to handle a mortgage on the property. I do not remember when that was. I did find the item of \$200,000 on the books of the bank which was marked or called "the Scandinavian-American Building Company." That was at a later date. It was treated of in one of the reports called for by our office. That was the letter I did not remember of having written, dated August 23d. I do not recall now anything about that letter. I do know I did not get any reply to it, and I presume in the course of the next few weeks I held one of the meetings I had in mind. Between August 23, 1920, and January 8th, 1921, I made no special examination of the books of the bank to determine whether or not the building company had got any money on that mortgage, and had retired the items to which I objected. The regular examination of the bank was made in December, but I did discuss this \$200,000 in stock with Mr. Drury, and I presume now it must have been after the date of this letter, and at that time he told me that it had been financed in the east. I think that was the time he made the

(Testimony of Claude P. Hay.)

[909] statement that not one sou marquee of the bank's money was in the building. That must have been between August 23 and December. When the December, 1920, report came in I got the information that the item of \$200,000 which the bank was carrying there in the name of the Scandinavian-American Building Company had not been retired. I made no special investigation of that, that was simply included in other matters that were taken up on the conference on January 8th. At that time my understanding was that after Mr. Simpson had failed to negotiate a loan in the east, the building was constructed and the bank advanced the money to the building, taking an assignment of that mortgage back to secure all of its advances. Without looking at the record I cannot recall what the advances were. At the meeting with the bank officers in January, 1921, I was informed by the trustees that the money advanced to the building company by the bank was properly secured by a mortgage for \$600,000 and prior to that time I had heard in some way something indefinite about a mortgage for \$600,000, but this was the first time I had heard any of the trustees or officers of the bank or building company say anything directly to the effect that this mortgage was security to the bank, and at that meeting nothing was said as to when the assignment of the mortgage had been made to the bank or how long they had held it. I never asked to see the document, I would not have done that part of the work



(Testimony of Claude P. Hay.)

and I was simply determining the policy that should be followed based on that report. [910]

Cross-examination.

(By Mr. STILES.)

I am not sure about the date of the examination that was made before December, 1920. I think I made that examination or participated in it. I think it was in January, 1920. There were two examinations during the year, one in January, and one in December. In January, 1920, I think the title to the real estate was in the bank, and in December, 1920, I think the lots had been deeded to the Scandinavian-American Building Company. My examiners did not discover anything that had taken place of the value of the lots. The real estate that they had previously owned had resolved itself into an equity, which was owned by the building company. I am inclined to think that the bank's records of December, 1920, showed that the bank property was an asset of the bank, but as a matter of fact, the property had been deeded in the previous March. Neither I nor the examiner attempted to reconcile this situation, there was not anything to reconcile. There was something irregular there, but that was one of the things that caused me to have this meeting on January 8th. That was for the purpose of reconciling it, perhaps.

Cross-examination.

(By Mr. METZGER.)

That was a meeting with Mr. Drury and Mr.



(Testimony of Claude P. Hay.)

Larson at my office in Olympia, immediately preceding the date of the letter of November 12, 1920, but that was the only meeting. If the records show there were two meetings, that is an error, because there was only one meeting.

Cross-examination.

(By Mr. HOLT.)

Q. Let me see if I understand your testimony correctly: You testified that this meeting in January, a statement [910½] was made to you by some of the directors at that meeting, that the bank then held an assignment of the \$600,000 mortgage, which was payable to Mr. Simpson, as security for the indebtedness for the money that had been advanced.

A. Yes, Mr. Drury, one of the directors of the bank, made that statement, I am quite positive because he did most of the talking.

Q. And after that meeting Mr. Drury said to you, we hold an assignment of the \$600,000 mortgage, and that is security for the loan? A. Yes.

Q. And you also testified that; until that time you had never heard any of the trustees of the bank refer to that \$600,000 mortgage as security? Did you not say, I had heard something in some way, picked up something about that, but I had never heard any of them say anything directly to that effect.

A. I do not recall at this time I ever heard any of the directors positively make that statement prior to that time. [911]

**Testimony of Samuel L. Morse, for the Receiver.**

SAMUEL L. MORSE, a witness called by the receiver, being duly sworn, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I am in the banking business and was formerly employed by the Scandinavian-American Bank at Tacoma, in the capacity of teller. Defendant's Exhibits 185 and 188 are not in my handwriting. Exhibit 187 is in my handwriting. The description of the note and the description of the collateral, down to the two abstracts which is in Mr. Geiger's handwriting. In Exhibit 188 the words "real estate loans" means that was turned into a real estate loan. We carried separate division of our bills receivable. There were commercial loans and real estate loans, and this item was charged up with the real estate loans in the sum of \$200,000 and these numbers on the cards refer to the numbers that the notes bore. On the back of that sheet are nine lines in writing; that is the collateral to the notes and as it came to the cage, the back of the note card is used for the description of the collateral. The writing on the back is in my handwriting. I put that there on Mr. Larson's instructions. Mr. Larson brought back a large envelope, some documentary envelope and told me what was in it, said it was a note of the Scandinavian-American Building Company for \$600,000 and a mortgage from the Building Company for \$600,000 and a mortgage from the Build-

(Testimony of Samuel L. Morse.)

ing Company to G. Wallace Simpson, and assignment from G. Wallace Simpson to the bank, and to put through a memorandum against the real estate loans of \$200,000 and use this as collateral to that loan; and he opened the envelope and read the note over. The note was written on a long form and quite a little detail and [912] I read the mortgage and assignment, and it was not quite clear to me. So just about that time Mr. Bean, vice-president, came in and I said to Mr. Bean, "Mr. Larson says to put through a memorandum note against real estate here, \$200,000, and I don't quite see the connection." Mr. Larson speaks, as he is walking away at times, and I was not sure I got it. I asked Mr. Bean if he knew anything about it, and he said no, he did not know whether it was right or not, and we went up to Mr. Larson's desk and Mr. Bean says, "Mr. Morse does not understand this"; he says, "you say put in a memorandum note against real estate loans, \$200,000, and he says is that the way you want it handled?" Mr. Larson says, "Yes; just make a memorandum note, \$200,000, against real estate loans," and so Bean brought it back and I made out the memorandum note at the same time. That was on the 9th. It went to the credit of the Scandinavian-American Building Company at that same time. The paper I am referring to I think is a memorandum note; you will find it on a brown piece of paper. This handwriting on the back of this exhibit on which I put this collateral to the credit of this note, to secure this note, was done

(Testimony of Samuel L. Morse.)

under the express direction of Mr. Larson, the president of the bank. I spoke about it at the time; this mortgage and note is for \$600,000 and he said that was all right, just put this \$200,000 against it.

. Cross-examination.

(By Mr. LANGHORNE.)

This \$200,000 I would consider a new note. There were two other charges against it at the time, one hundred and fifty, I think; December 9th, there was a \$100,000 note and a \$50,000 note charged against the Scandinavian-American Building Company at the same time this \$200,000 was credited. [913] The \$200,000 was credited to the Scandinavian-American Building Company and then the two notes we had in there, one for fifty and one for one hundred, had been charged up against the account and thereby retired. This was a new note and at the same time increased their obligation to the bank \$50,000. There was a \$200,000 credit and \$150,000 of their notes that we had in there was charged off, so that it increased their loan on the note card by \$50,000, that is, increased their liability to the bank by \$50,000. I do not know how much of that \$50,000 was already represented in overdrafts on the books of the bank on that day. I am under the impression that the overdraft at that time was \$43,000. So that the actual new additional credit was in the neighborhood of \$7,000. It is true that prior to December, 1920, I carried on the stocks and bonds ledger \$200,000 item of the capital stock of the Building Company. The memorandum note was



(Testimony of Samuel L. Morse.)

made up in its entirety by me; I signed it, Scandinavian-American Building Company, and then wrote "memorandum note" under it. It was never signed by any officer of the building company. This transaction was put through on the 9th of December. An examination of the bank was made by the bank commissioners' office on December 20th.

Q. And at the time you made it, you had reason to believe that an examination by the banking authorities was imminent, did you not?

A. No, I would not think that, because in the past the [914] examination was made about the close of the year; in fact, I think from 1919 to 1921 it represented over a year. When they came in there on the 20th of December, I was a little bit surprised, because I did not expect them until the first of the year. There were two examinations in 1920.

The defendants and cross-complainants, J. P. Duke, as Supervisor of Banking of the State of Washington, and Forbes P. Haskell, as Special Deputy Supervisor of Banking of the State of Washington, in charge of the liquidation of the Scandinavian-American Bank hereupon offered exemplified copies of the following papers, which were admitted as Exhibits (certified copies of these instruments have heretofore been offered in evidence by The Far West Clay Company, being numbered Exhibits Nos. 237, 238, 239, 240, 244, 245).



**Receiver's Exhibit No. 322.**

“324811.

This Indenture Witnesseth, That Scandinavian-American Bank, of Tacoma, a corporation organized and existing under the laws of the State of Washington, party of the first part, for and in consideration of the sum of One (1) Dollars in lawful money of the United States of America, to it in hand paid by J. E. Chilberg and Anna M. Chilberg (husband and wife), parties of the second part, has Granted, Bargained and Sold, and by these presents does Grant, Bargain, Sell and Convey unto the said parties of the second part, and to their heirs and assigns, the following described real property, situate, lying and being in the County of Pierce, State of Washington, to wit:

Lots numbered Eleven (11) and Twelve (12), in Block Ten Hundred and Three (1003) in the City of Tacoma, as shown and designated on a certain plat entitled “Map of New Tacoma, Washington Territory,” which plat was filed for record in the office of the Auditor of said Pierce County, February 3d, 1875.

Also including herein the party walls on each or either side of said premises, and the agreements respecting the same, and all rights on or to said party walls or under or by virtue of all of the agreements respecting the same.

Any streets or alleys, or portions thereof, on which the above property abuts which have been or may hereinafter be [915] vacated by City Council or

otherwise and be annexed to the above described property or become the property of the grantor.

To Have and To Hold, the said premises, with all their appurtenances, unto the said parties of the second part, and to their heirs and assigns forever; and the said Scandinavian-American Bank, of Tacoma, party of the first part, for itself and its successors, does hereby covenant to and with the said parties of the second part, their heirs and assigns, that it is the owner in fee simple of said premises, and that they are free from all incumbrances except mortgages of record, and that it will Warrant and Defend the title thereto against all lawful claims whatsoever.

In Witness Whereof, the said party of the first part has caused its corporate name and seal to be hereunto subscribed and affixed; and these presents to be executed by its officers thereunto duly authorized, this 1st day of September, 1910.

SCANDINAVIAN - AMERICAN BANK  
OF TACOMA.

By W. H. PRINGLE,  
Vice-prest.,  
*Its President.*

Attest: E. C. JOHNSON,  
Cashier.

[Corporation Seal of Scandinavian-American Bank  
of Tacoma.]

Executed in presence of

V. A. SWANSON."

Acknowledged by W. H. Pringle, Vice-president,  
and E. C. Johnson, Cashier, on the 7th day of

September, 1910, before V. A. Swanson, Notary Public residing at Tacoma, Pierce County, Washington.

**Receiver's Exhibit No. 323.**

“331893.

This Indenture Witnesseth, That J. E. Chilberg and Anna M. Chilberg (husband and wife) parties of the first part, for and in consideration of the sum of One (1) Dollars in lawful money of the United States of America to them in hand paid by Scandinavian-American Bank, of Tacoma, a corporation party of the second part, have Granted, Bargained and Sold, and by these presents do Grant, Bargain, Sell, and Convey unto the said party of the second part, and to its successors *heirs* and assigns, the following described real property, situate, lying and being in the County of Pierce State of Washington, to wit:

Lots numbered Eleven (11) and Twelve (12), in Block Ten Hundred Three (1003) in the City of Tacoma, as shown and designated on a certain plat entitled “Map of New Tacoma, Washington, Territory,” which plat was filed for record in the office of the Auditor of said Pierce County, February 3rd, 1875.

Also including herein the party-walls on each or either side of said premises and the agreements respecting the same, and all rights in or to said party-walls or under or by virtue of all of the agreements respecting the same. [916]

Any streets or alleys, or portions thereof, on which

the above property abuts which have been or may hereafter be vacated by City Council or otherwise and be annexed to the above described property or become the property of the grantors.

To Have and To Hold, the said premises, with all their appurtenances, unto the said party of the second part, and to its *heirs* and assigns forever; and the said J. E. Chilberg and Anna M. Chilberg (Husband and wife) parties of the first part, for them and for their heirs, executors and administrators, do hereby covenant to and with the said party of the second part its successors *heirs* and assigns, that they are the owners in fee simple of said premises, and that they are free from all encumbrances except mortgages for \$150,000.00, and that They will Warrant and Defend the title thereto against all lawful claims whatsoever.

Witness our hands and seals this 12th day of January A. D. One Thousand Nine Hundred and Eleven.

J. E. CHILBERG. (Seal)

ANNA M. CHILBERG. (Seal)

Signed, sealed and delivered in presence of  
\_\_\_\_\_.”

Acknowledged by J. E. Chilberg and Anna M. Chilberg, husband and wife, on the 12th day of January, 1911, before V. A. Swanson, Notary Public residing at Tacoma, Pierce, County, Washington.

**Receiver's Exhibit No. 324.**

“332017.

State of Washington,  
County of King,—ss.

**AFFIDAVIT OF GOOD FAITH.**

J. E. Chilberg and Anna M. Chilberg, his wife, being first duly sworn, on oath depose and say, and each says, that they heretofore duly made, executed and delivered to The Penn Mutual Life Insurance Company, a corporation, of Philadelphia, Pennsylvania, their certain mortgage on the following described property situated in Pierce County, Washington, to wit:

Lots numbered eleven (11) and twelve (12) in Block numbered ten hundred and three (1003) in the City of Tacoma, as shown and designated on a certain plat entitled “Map of New Tacoma, Washington Territory,” which plat was filed for record in the office of the Auditor of said Pierce County, February 3rd, 1875. Also including herein the party walls on each or either side of said premises, and the agreements respecting the same, and all rights in or to said party-walls or under or by virtue of all of the agreements respecting the same.

And streets, or alleys, or portions thereof, on which the above property abuts which have been or may be vacated by City Council or otherwise and be annexed to the above described property, or become the property of the mortgagors, their heirs, executors, successors and assigns, shall immediately



become additional security under this mortgage and subject to all the terms and conditions in said mortgage; [917] together with all the buildings and structures thereon or that may hereafter be placed thereon, and also any and all elevators, engines, boilers, and all heating, lighting, plumbing and ventilating fixtures and apparatus now on said premises, or that may hereafter be placed thereon, with all and singular the tenements, hereditaments, and appurtenances to the same belonging or in anywise appertaining, hereby expressly waiving and relinquishing any and all right or claim of homestead, and the benefit of any and all exemption appraisement or stay laws of the State of Washington; to secure the payment of the principal sum of One Hundred Thousand (\$100,000.00) Dollars, and interest thereon, as evidenced by a certain promissory note executed by them in favor of said Pen Mutual Life Insurance Company; said mortgage being dated September 2, 1910, and acknowledged September 20, 1910 and recorded in the office of the Auditor of Pierce County, Washington, on September 23, 1910, in Book 165 of Mortgages at Page 452, which said mortgage is hereby referred to and made a part hereof as fully and to the same extent as if set forth in full herein;

Affiants and each of them further state, on oath that said mortgage is and was made in good faith, and without any design to hinder, delay, or defraud creditors.

J. E. CHILBERG.

ANNA M. CHILBERG.

Subscribed and sworn to before me this 14th day of January, A. D. 1911.

[Notarial Seal]      W. V. RINEHART, Jr.,  
Notary Public in and for the State of Washington,  
Residing at Seattle in said County.

**Receiver's Exhibit No. 325.**

“553362.

(Internal Revenue \$350.00 2/25/20 M. M. C. E. M.  
McC. Scandinavian-American Bank of Ta-  
coma, Wn.)

**WARRANTY DEED.**

The Grantor, Scandinavian-American Bank of Tacoma, a corporation organized under the laws of Washington, of Tacoma, County of Pierce, State of Washington, for and in consideration of Ten Dollars and other valuable considerations in hand paid hereby conveys and warrants to SCANDINAVIAN-AMERICAN BUILDING COMPANY, a corporation organized under the laws of Washington, the following described real estate situate in the County of Pierce State of Washington, to-wit:

Lots Eleven (11) and Twelve (12) in Block One thousand and three (1003) as shown and designated upon a certain plat for record in the office of the Auditor of Pierce County, Washington entitled “Map of *of* New Tacoma, W. T.”

Dated this 25th day of February, 1920.

SCANDINAVIAN-AMERICAN BANK  
OF TACOMA.

By O. S. LARSON,  
President.

By M. M. OGDEN,  
Cashier."

[Corporate Seal of Scandinavian-American Bank  
of Tacoma, Wn.]

Acknowledged by O. S. Larson, President, and  
M. M. Ogden, Cashier, before E. F. Freeman, No-  
tary Public, residing at Tacoma, Wash., on Feb-  
ruary 25, 1920. [918]

**Receiver's Exhibit No. 326.**

"324812.

**MORTGAGE.**

This Indenture, Made this 2nd day of September  
A. D. 1910, between J. E. Chilberg and Anna M.  
Chilberg, husband and wife at all times since pre-  
vious to acquiring title to the within described prop-  
erty, jointly and severally, hereinafter referred to  
as the "first party" and The Penn Mutual Life  
Insurance Company, a corporation, organized un-  
der the laws of the State of Pennsylvania, and  
having its principal place of business at Phila-  
delphia, hereinafter referred to as the "second  
party":

Witnesseth, that the first party in consideration  
of One Hundred Thousand (\$100,000.00) Dollars, to  
first party in hand paid by second party, the receipt  
of which is hereby acknowledged does by these

presents grant, sell, convey and warrant unto second party, its successors and assigns, the following described property, situated in Pierce County, Washington, to-wit:

Lots numbered eleven (11) and twelve (12) in Block numbered ten hundred and three (1003) in the City of Tacoma, as shown and designated on a certain plat entitled "Map of New Tacoma, Washington Territory," which plat was filed for record in the office of the Auditor of said Pierce County February 3rd, 1875.

Also including herein the party-walls on each or either side of said premises, and the agreements respecting the same, and all rights in or to said party-walls or under or by virtue of all of the agreements respecting the same.

Any streets or alleys, or portions thereof, on which the above property abuts which have been or may be vacated by City Council or otherwise and be annexed to the above described property, or become the property of the mortgagees, their heirs, executors, successors and assigns, shall immediately become additional security under this mortgage and subject to all the terms and *and* conditions in said mortgage, together with all the buildings and structures thereon or that may hereafter be placed thereon, and also any and all elevators, engines, boilers, and all heating, lighting, plumbing and ventilating fixtures and apparatus now on said premises, or that may hereafter be placed thereon, with all and singular the tenements, hereditaments, and appurtenances to the same be-

longing or in any wise appertaining, hereby expressly waiving and relinquishing any and all right or claim of homestead, and the benefit of any and all exemption, appraisement or stay laws of the State of Washington,

To Have and To Hold the above granted premises unto second party, its successors and assigns, forever with all the tenements hereditaments and appurtenances thereto belonging.

First party hereby covenants and agrees to and with second party as follows, to-wit:

1. That first party is seized of said premises in fee simple absolute, and has good right to convey and mortgage the same.

2. That second party shall quietly enjoy said premises.

3. That said premises are free from all encumbrances.

4. That first party will execute or procure and deliver to second party upon demand any and all further conveyances or other instruments necessary or proper to render this mortgage a first lien upon a good and marketable title to said property. [919]

5. That first party will warrant and defend the title to said property forever against all lawful claims and demands whatsoever.

This instrument is a Mortgage given to secure the payment of the following — sums and the performance of the following agreements, to-wit:

1. The first party is justly indebted to second party in the principal sum of \$100,000.00 evidenced by a certain negotiable promissory note of even



date herewith, made by first party and payable to the order of second party, payable on the 1st day of September A. D. 1915, with interest thereon from date until maturity at the rate of 5 per cent per annum, and from maturity until paid at the rate of twelve per cent per annum, payable semi-annually on the 1st days of March and September in each year, both principal and interest payable only in United States gold coin of the present standard of weight and fineness, at the office of Penn Mutual Life Insurance Company, Philadelphia, Penna with New York exchange.

All as shown in said note and in the interest coupons thereto attached, which said principal and interest first party hereby promise and agrees to pay, and first party hereby consents to the entry of a deficiency judgment against first party jointly and severally for whatever balance of the judgment debt, costs, expenses, or attorney fees that may remain unsatisfied after the foreclosure sale, if any be made, hereunder.

First Party hereby agrees to at once procure and maintain at least \$80,000.00 fire insurance on the buildings now or hereafter erected upon said property, in some responsible insurance company to be approved by second party, with loss, if any, in said insurance and in all insurance now or hereafter carried by first party on said property, payable to second party, its successors or assigns as its interest may appear, and first party agrees to pay all premiums therefor when due, and to forthwith deliver to second party all policies for all insur-

ance now or hereafter carried on said property to be held by second party until date of expiration, whether before or after foreclosure, with the right, but under no obligation, to collect by suit or otherwise, and at first party's expense any and all money that may at any time become payable thereon, and to apply the same when received to the payment of any part of the indebtedness secured by this mortgage, together with all the costs and expenses incurred in collecting same, including attorney fees, or second party *party* may elect to have the buildings repaired or new buildings erected on said mortgaged premises.

If first party shall for any reason fail to procure such insurance, or any part thereof, then second party shall have the right, but shall be under no obligation, to procure the same, or any part thereof, and to pay the premiums therefor, and first party agrees to repay same to second party on demand.

First party agrees to keep all the property above described or referred to in as good repair and condition as same is now in, or may be put in during the continuance of this mortgage, and not to commit or permit waste of said premises until the debt hereby secured is fully paid.

First party hereby agrees to pay all taxes, assessments, and other public charges that have been or may hereafter [920] be levied or assessed upon said premises, or upon said mortgage or the note hereby secured, or against the holder hereof on account thereof, and all personal taxes of first party, before same become delinquent, and to de-

liver to second party satisfactory receipts showing payment thereof, and also agrees to pay or discharge before delinquent any and all liens, or claims of any nature now existing or that may hereafter be created or perfected on or against said property mortgaged hereby, so that this mortgage shall be and continue a first lien on all said property above described until all sums hereby secured are fully paid.

If first party shall fail to perform any of the foregoing agreements, then second party shall have the right, but shall be under no obligation, to pay, contest, or extinguish such taxes, assessments, insurance premiums, liens, claims, adverse titles, or encumbrances, or cause said repairs to be made, and the amount so paid including all necessary expenses and attorney fees, with interest thereon at the rate of twelve per cent per annum, from the date of any advancement until the same is wholly repaid, shall be a lien upon the premises aforesaid and be secured by this mortgage and collected in the same manner and as a part of the debt secured hereby, and said first party expressly agrees to pay the same on demand.

The first party shall not, and will not apply for or claim any deduction by reason of this mortgage from the taxable value of said land, premises or property, but will pay all taxes upon the same in full, and also all taxes which may be levied upon this mortgage or the moneys secured hereby without regard to any law heretofore enacted or hereafter to be enacted assessing the whole or any part

thereof to the party of the second part. Upon violation of this condition or the passage by the state of a law imposing upon the mortgagee payment of the whole or any portion of the taxes on the mortgaged premises or upon the moneys or loan secured by this mortgage, or upon the rendering by any Court of competent jurisdiction of a decision that the assumption by the mortgagor of liability to pay any tax or taxes assessed against the mortgagee is legally inoperative, then and in any such event the debt hereby secured may, at the option of the party of the second part immediately become due and collectible, as though the debt had matured through lapse of time, and without any deduction, anything herein contained or any law which has passed to the contrary notwithstanding.

First party hereby agrees that in case of any failure to pay any part of the sums hereby secured, either principal or interest, taxes, liens, encumbrances, repairs, insurance premiums, or other items herein referred to, according to the terms of said note and interest notes, or of this mortgage, when the same become due or payable, or in case of any failure to comply with any of the conditions or agreements contained in this mortgage, the whole sum secured hereby shall at the option of second party, become at once due and payable, without any notice or demand, with interest from date of default until paid at the rate of twelve per cent per annum, it being agreed that time and the strict performance of the provisions hereof and of said note and interest notes are material and of the



essence of the same, and said mortgage may be foreclosed, whereupon in addition to the sum found due at the time of foreclosure, first party hereby agrees to pay [921] to second party as attorney fees in said suit the sum provided therefor in said note, and also the expense of having the abstract of title to said premises brought down to date to show the commencement of said foreclosure proceedings, together with the costs and disbursements of such suit.

It is further agreed that in case of any default in any respect so that this mortgage may be foreclosed, all the rents, revenues and profits of said premises during the existence of this mortgage and until the payment of the debts secured hereby and until the expiration of the time for redemption after foreclosure sale, or execution, are hereby mortgaged and pledged to the payment of the indebtedness secured hereby, and that upon any default on the part of said first party in the performance of any of the terms, conditions or provisions of this mortgage, said note, or said interest notes, it is agreed and shall be conclusively presumed that said rents, revenues and profits are in danger of being lost, removed and materially injured, and that said premises are insufficient to discharge the debt secured hereby; that upon the filing of the complaint to foreclose this mortgage, the court, on motion of second party, and without any notice to first party, shall appoint a receiver with the usual powers, to take immediate possession of all of the property mortgaged hereby, and



to demand, receive and recover all rents, revenues and profits of said property then due or payable or that may thereafter become due or payable; that said receivership shall, at the option of the second party, continue until payment of the whole sum secured hereby, or until the expiration of the time of redemption after the foreclosure sale hereunder. The said receiver shall, on motion of second party, under the order and direction of the Court, pay any or all taxes, or other liens, insurance, and repairs on said property, out of the money so received by him, and shall pay the balance, after the expenses of said receivership have been paid, to the plaintiff in the action to apply on said mortgage indebtedness. It is agreed that said party of the second part shall be under no liability of any nature because of or arising out of the appointment of such receiver, or any of his acts and doings.

All of the provisions and agreements herein contained shall be binding on the party or parties of the first part, jointly and severally, as principals, and their respective heirs, executors, administrators, successors and assigns, as fully and to the same effect as if expressly named herein, and all rights created or evidenced hereby or by said note, or said interest notes, shall inure to the benefit of the heirs, executors, administrators, successors and assigns of said second party, as fully as if expressly named herein, and may be exercised by them.

Provided, However, That if all the foregoing covenants agreements and stipulations shall be fully performed according to the true intent hereof, this

mortgage shall thenceforth be null and void, and shall be released by second party at the cost of first party.

In witness whereof, first parties have subscribed their names hereto jointly and severally, as principals.

Executed in the presence of

J. E. CHILBERG.

ANNA M. CHILBERG.

Executed in the presence of

E. L. SHANSTROM.''' [922]

Acknowledged by J. E. Chilberg and Anna M. Chilberg, husband and wife, on September 20, 1910, before Percy C. Shanstrom, Notary Public residing at Seattle, King County, Washington.

**Receiver's Exhibit No. 327.**

"431175.

(Internal Revenue \$20.00 10-27-15 J. E. C.)

**AGREEMENT FOR EXTENSION OF TIME OF  
PAYMENT OF NOTE AND MORTGAGE.**

Whereas, the undersigned, J. E. Chilberg, and Anna Chilberg, husband and wife, on or about September 2nd, 1910, for a valuable consideration, made, executed, and delivered to The Penn Mutual Life Insurance Company, a corporation of the city of Philadelphia, State of Pennsylvania, their promissory note for the sum of One Hundred Thousand Dollars (\$100,000.00) payable on the first day of September, 1915, with interest from date until maturity at 5% per annum and from maturity until paid at the rate of 12% per annum; and to secure

the payment of said note, duly made, executed, and delivered to the said The Penn Mutual Life Insurance Company, their mortgage on property in Pierce County, Washington, described as follows:

Lots numbered eleven (11) and twelve (12) in Block numbered Ten hundred and three (1003) in the City of Tacoma, as shown and designated on a certain plat entitled "Map of New Tacoma, Washington Territory," which plat was filed for record in the office of the Auditor of said Pierce County, February 3rd, 1875.

Also including herein the party walls on each or either side of said premises, and the agreements respecting the same, and all rights in or to said party walls or under or by virtue of all of the agreements respecting the same. Any streets or alleys, or portions thereof, on which the above property abuts which have been or may be vacated by City Council or otherwise and be annexed to the above described property, or become the property of the mortgagors, their heirs, executors, successors and assigns, shall immediately become additional security under this mortgage and subject to all the terms and conditions in said mortgage; together with all the buildings and structures thereon or that may hereafter be placed thereon, and also any and all elevators, engines, boilers, and all heating, lighting, plumbing and ventilating fixtures and apparatus now on said premises, or that may hereafter be placed thereon, with all and singular the tenements, hereditaments and appurtenances to the same belonging or in anywise appertaining, hereby ex-

pressly waiving and relinquishing any and all right or claim or homestead, and the benefit of any and all exemption; appraisement or stay laws of the State of Washington; and whereas said mortgage was thereafter on September 23rd, 1910, duly recorded in the office of the Auditor of said Pierce County, Washington, in book 165 of Mortgages at Page 452, being Auditor's fee number 324812; and a certified copy thereof, filed in the office of the Auditor of Pierce County, Washington, as a Chattel Mortgage, on the 18th day of January, [923] 1911, at 4/13 P. M. County Auditor's fee number 332175; and whereas no part of said principal sum of One Hundred Thousand Dollars (\$100,000.00) has been paid; and

Whereas said J. E. Chilberg and Anna Chilberg husband and wife, hereby covenant and represent that they are the owners and in possession of said premises above described and have paid all interest on said note of One Hundred Thousand Dollars (\$100,000.00) down to and including September 1st, 1915; and whereas, said J. E. Chilberg and Anna Chilberg, husband and wife, desire and have applied to the said The Penn Mutual Life Insurance Company for an extension of time of the payment of said sum of One Hundred Thousand Dollars (\$100,000.00) so that the same may become due as follows, to wit:

\$10,000.00 on September 1st, 1916,

\$10,000.00 on September 1st, 1917,



\$ 5,000.00 on September 1st, 1918,

\$ 5,000.00 on September 1st, 1919,

\$70,000.00 on September 1st, 1920,

with interest at the rate of  $5\frac{1}{2}$  per cent per annum from September 1st, 1915, until maturity, and at 10% per annum from maturity until paid, under the same terms and conditions in all other respects that are set out in said note and mortgage.

Now, therefore, it is hereby agreed by and between the said J. E. Chilberg and Anna Chilberg, husband and wife, and The Penn Mutual Life Insurance Company, that the time for payment of said principal sum of One Hundred Thousand (\$100,000.00) shall be extended and the same shall be due and payable as follows, to wit:

\$10,000.00 on September 1st, 1916,

\$10,000.00 on September 1st, 1917,

\$ 5,000.00 on September 1st, 1918,

\$ 5,000.00 on September 1st, 1919,

\$70,000.00 on September 1st, 1920,

with interest at the rate of  $5\frac{1}{2}$ % per annum from September 1st, 1915, until maturity, and at 10% per annum from maturity until paid; said interest being payable semi-annually on the 1st days of March and September of each year, and in the same manner and under the same terms, conditions and provisions that are specified in said note and subject to all the remaining terms, conditions and provisions of said note and said mortgage, the same as if said note and mortgage had been payable originally as extended above.



Said J. E. Chilberg, and Anna Chilberg, husband and wife, hereby expressly agree that the statute of limitation shall not begin to run against said principal note for One Hundred Thousand Dollars (\$100,000.00) prior to the end of said period to which the payment thereof is hereby extended, to wit: September 1st, 1920.

Said J. E. Chilberg and Anna Chilberg, husband and wife, hereby expressly agree to pay said principal sums as above specified, and to pay said interest thereon at the times hereinabove specified, and to perform and comply with each and all of the terms, conditions and provisions of said note as hereby modified and of said mortgage, with the same and like effect as if said terms and provisions were set out in full herein.

As a part of the consideration to The Penn Mutual Life Insurance Company for the granting of the foregoing extension [924] of time of payment and change in the rate of interest, the undersigned Scandinavian-American Bank of Tacoma, hereby requests that said extension of time be granted on the terms specified in this agreement and hereby consents to said extension of time and change in the rate of interest and acknowledges that said mortgage and said extension thereof are an absolute first lien on said premises, superior in every respect to any interest said Scandinavian-American Bank of Tacoma may have in said property or may hereafter acquire therein, it being understood however, that said Scandinavian-American Bank of Tacoma does not itself assume any personal obligation to

pay the indebtedness secured by said mortgage, the only personal obligation to pay said indebtedness secured by said mortgage being the personal obligation of J. E. Chilberg and Anna Chilberg, his wife.

Dated at Tacoma, Washington, this 27th day of October, A. D. 1915.

J. E. CHILBERG.

ANNA CHILBERG.

SCANDINAVIAN-AMERICAN BANK OF  
TACOMA.

By W. H. PRINGLE,  
Its Vice-President.

Attest: E. C. JOHNSON,  
Its Cashier.

[Corporate Seal of Scandinavian-American Bank of  
Tacoma.]

Dr.—THE PENN MUTUAL LIFE INSUR-  
ANCE COMPANY.

By GEO. K. JOHNSON,  
Its President.

Attest: S. A. SMITH,  
Asst. Secretary."

[Corporate Seal of Penn Mutual Life Insurance Co.  
of Philadelphia.]

Acknowledged by W. H. Pringle, vice-president,  
and E. C. Johnson, Cashier of the Scandinavian-  
American Bank of Tacoma, on October 27, 1915, be-  
fore H. Berg, Notary Public, residing at Tacoma,  
Pierce County, Washington.

Acknowledged Geo. K. Johnson, President, and  
S. A. Smith, Assistant Secretary of the Penn

Mutual Life Insurance Company, on November 10, 1915, before Frank J. Reeves, Notary Public residing at Philadelphia, Pennsylvania.

Acknowledged by J. E. Chilberg and Anna Chilberg, husband and wife, before P. C. Shanstrom, Notary Public, residing in Seattle, King County, Washington, on October 27, 1915.

“State of Washington,  
County of King

AFFIDAVIT of GOOD FAITH.

J. E. Chilberg and Anna Chilberg, his wife, being first duly sworn on oath depose and say, and each says, that they are the persons who executed the foregoing Extension Agreement and each says that said Extension Agreement and also the mortgage of which the same is an extension were severally made in good faith and without any desire to hinder, delay or defraud creditors.

J. E. CHILBERG.

ANNA CHILBERG

Subscribed and sworn to before me this 27th day of October, 1915.

[Notarial Seal.]

P. C. SHANSTROM,

A Notary Public in and for the State of Washington, Residing at Seattle, Wash. [925]

State of Washington,  
County of Pierce,—ss.

W. H. Pringle and E. C. Johnson, being first duly sworn, depose and say that they are respectively the Vice President and the Cashier of Scandinavian-

American Bank of Tacoma, a corporation, and that they make this affidavit of Good Faith as such officers for and on behalf of said Bank; that the foregoing Extension Agreement and also the mortgage of which the same is an extension were made in good faith and without any design to hinder, delay or defraud creditors.

W. H. PRINGLE,  
E. C. JOHNSON.

Subscribed and sworn to before me this 27th day of October, 1915.

[Notarial Seal.] H. BERG,  
A Notary Public in and for the State of Washington, Residing in Tacoma.

**Receiver's Exhibit No. 328.**

“610390.

FOR VALUE RECEIVED, THE PENN-MUTUAL LIFE INSURANCE COMPANY, hereby sells, assigns, transfers and conveys to F. P. Haskell, Jr., as special deputy bank commissioner in charge of liquidation of SCANDINAVIAN-AMERICAN BANK OF TACOMA the following described Mortgage, together with the note and claim thereby secured, authorizing it to discharge the same as fully as said THE PENN MUTUAL LIFE INSURANCE COMPANY might or could do if these presents were not made without recourse

on the said THE PENN MUTUAL LIFE INSURANCE COMPANY in any event, to wit:

J. E. CHILBERG and ANNA CHILBERG Husband and Wife,

Mortgagors,

THE PENN MUTUAL LIFE INSURANCE COMPANY,

Mortgagee.

Date of Mortgage, September 2d, 1910. Recorded in Book 165, page 452 of the records of Mortgages in the office of the Auditor of Pierce County, Washington, Auditor's Fee No. 324812, on September 23d 1910, at 3:46 o'clock P. M.

Amount \$100,000.00.

The property covered by said Mortgage in in Pierce County, Washington, and described as follows; to wit:

Lots numbered eleven (11) and twelve (12) in Block numbered one thousand and three (1003) in the City of Tacoma, as shown and designated upon a certain plat entitled "Map of New Tacoma, Washington, Territory," which plat was filed for record in the office of the Auditor of said County February 3d, 1875.

Dated at Philadelphia, Pennsylvania, this 25th day of February, A. D. 1921.

IN WITNESS WHEREOF, THE PENN MUTUAL LIFE INSURANCE COMPANY, has caused these presents, to be signed by its — President and attested by its — secretary and sealed



with its [926] corporate seal being thereunto duly authorized.

THE PENN MUTUAL LIFE INSURANCE COMPANY.

By GEO. K. JOHNSON,  
Its President.

Attest: SYDNEY A. SMITH,  
Its Secretary.

[The Penn Mutual Life Insurance Company,  
Phila.] (D. R.)

Witnessess:

FRANK J. REEVES.

WM. H. BAKER, Jr.

Notary Public.

Commission expires February 24, 1923."

Acknowledged by George K. Johnson, President and Sydney A. Smith, Secretary, of the Penn Mutual Life Insurance Company, on January 25, 1921, before Frank J. Reeves, Notary Public residing at Philadelphia, Pennsylvania.

**Receiver's Exhibit No. 329.**

"FOR VALUE RECEIVED, the undersigned, F. P. Haskell, Jr., as Special Deputy Bank Commissioner in charge of the liquidation of the Scandinavian-American Bank of Tacoma, hereby sells, assigns, transfers and conveys to J. P. DUKE, as Supervisor of Banking of the State of Washington, in charge of the liquidation of the Scandinavian-American Bank of Tacoma, the following described

mortgage, together with the note and claim thereby secured, to wit:

J. E. CHILBERG and ANNA CHILBERG, Husband and Wife,

Mortgagors,

THE PENN MUTUAL LIFE INSURANCE COMPANY,

Mortgagee.

Date of Mortgage, September 2d, 1910, Recorded in Book 165, page 452 of the records of Mortgages, in the office of the Auditor of Pierce County, Washington, Auditor's Fee No. 324812, on September 23d, 1910, at 3:45 o'clock P. M.

Amount \$100,000.00.

The property covered by said Mortgage is in Pierce County, Washington, and described as follows, to wit:

Lots numbered Eleven (11) and Twelve (12) in Block numbered One Thousand and Three (1003) in the City of Tacoma, as shown and designated upon a certain plat entitled "Map of New Tacoma, Washington Territory," which plat was filed for record in the office of the Auditor of said County February 3d, 1875.

WHICH SAID MORTGAGE was assigned to the undersigned by the mortgagee therein named, the Penn Mutual Life Insurance Company, on the 25th day of February, 1921.

IN WITNESS WHEREOF the undersigned has hereunto set his hand and seal this 1st day of April, 1921.

F. P. HASKELL, Jr.,

As Special Deputy Bank Commissioner in Charge of the Liquidation of the Scandinavian-American Bank of Tacoma, an Insolvent Banking Corporation."

Acknowledged by F. P. Haskell, Jr., as Special Deputy Bank Commissioner in charge of the Liquidation of the Scandinavian-American Bank of Tacoma, on April 1, 1921, before Thomas MacMahon, Notary Public, residing at Tacoma, Washington. [927]

**Testimony of Forbes P. Haskell, Jr., for the Receiver.**

FORBES P. HASKELL, Jr., a witness called on behalf of the receiver, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I purchased the Penn Mutual Mortgage, or took an assignment of it, the latter part of February, 1921. The entire mortgage was overdue, it carried 12% after maturity. I was notified I would have to pay 12% if the mortgage was not paid within a very short time. There is now due on this mortgage \$75,345.32, figured to this date. I compromised by paying the Penn Mutual eight per cent and figured the interest on the amount I paid from that date to this date at 6%. At the time I took the assignment the interest amounted to \$2,366.35. That mortgage has never been paid to anybody. I took the assignment in my own name as Special Deputy Bank Commissioner in charge of the liquidation of the Scandinavian-American Bank of Tacoma. That

(Testimony of Forbes P. Haskell.)

was purchased with money I had on hand as Deputy Supervisor which was collected by me from the assets of the bank during the process of liquidation.

Cross-examination.

(By Mr. METZGER.)

This interest, \$2,366.35, was 8% interest on \$70,000 from the time the interest had last been paid to the time I paid it, I have figured interest at 6% on the entire amount I paid for the mortgage, 6% interest straight. At the time I took over this mortgage, the Penn Mutual was demanding action, they notified me that they would foreclose if it was not paid; they notified their agent here in town, Boyle & Company and Boyle came to me knowing that I was in charge of the bank's business, and probably was in touch with the Building [928] Company's business. The property had been deeded to the Building Company subject to this mortgage.

Cross-examination.

(By Mr. STILES.)

I have included in my figures interest on the interest which I paid, I assumed that in buying this assignment of this mortgage that if we figured interest at the rate of 6% on the principal, when I had a right to figure 12%, and chose to be satisfied with 6%, I would be justified in charging 6% on the entire amount that I had invested in the mortgage. The face amount of the mortgage due at the time I purchased it was \$70,000.

**Receiver's Exhibit No. 335.**

(Exemplified Copy of the following order.)

“In the Superior Court of the State of Washington  
in and for the County of Pierce.

No. 47348.

In the Matter of the Insolvency of the SCANDI-  
NAVIAN-AMERICAN BANK OF TA-  
COMA, Tacoma, Washington, a Corporation.

**ORDER.**

This matter coming on regularly to be heard this 23d day of February, 1921, on the motion of CLAUDE P. HAY, Bank Commissioner of the State of Washington, for an order authorizing and directing him to take up by assignment, or otherwise, the mortgage of Seventy Thousand (\$70,000.00) Dollars existing against Lots eleven (11) and twelve (12) in Block One thousand three (1003) “Map of New Tacoma,” W. T.; and it appearing to the Court that it is to the best interests of the creditors of the Scandinavian-American Bank of Tacoma, an insolvent banking corporation, that the Bank Commissioner be authorized and directed to take up said mortgage in order to prevent the foreclosure of the same and thereby incurring a tremendous amount of costs and attorneys’ fees, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, That the State Bank Commissioner be and he is hereby authorized and directed to



(Testimony of W. E. Morse.)

take up the said mortgage by assignment, or otherwise, and to pay therefor the principal sum of \$70,000.00 together with the interest amounting to \$2,275.00, together with New York exchange.

Done in open court this 23d day of February, 1921.

M. L. CLIFFORD,  
Judge.

Ent. Jour. 181, page 142, Dept. 4, 1921.

Filed in the Superior Court Feb. 23, 1921. George F. Murray, Clerk. By Libby, Deputy." [929]

**Testimony of W. E. Morse, for the Receiver.**

W. E. MORSE, a witness called by the Receiver, being duly sworn, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

The filing jacket, Exhibit 336 (Receiver), is an envelope that is used in our collateral files, to file our collateral to different notes. The slip on the face here is used for reference to the collateral and what note the collateral is securing, it is in my hand writing. The collateral contained in this envelope was collateral security to the note of \$200,000 and bore Number R.—E.—232. R. E. stands for real estate and 232 is the number of the note.

**Receiver's Exhibit No. 336.**

“Scandinavian-American Bldg. Co. collateral R. E. note #232.

Note for \$600,000 of the Scand. Amer. Bldg. Co. to G. Wallace Simpson.

(Testimony of W. E. Morse.)

Mtg. covering lots 10, 11, 12, Block 1003, Map of New Tacoma, W. T., and all buildings, equipment, etc.

Assignment of mtg. from G. Wallace Simpson to Scand. Amer. Bk. of Tacoma.

Mtge. filed in Pierce Co. Mar. 10, 1920, #553364."

This filing jacket was a part of the bank files. Kept there while I was there, the collateral files. This \$200,000 item went through our records as a new note. In the customary way of handling notes, if a renewal is brought in, it replaces the one in our files that is due or past due. That was not done in this case. This amount of \$200,000 was credited to the Scandinavian-American Building Company and a note of \$100,000, and a note of \$50,000 plus interest on each, were credited to the account. That was not considered the usual way of handling the notes in the note department, that being a renewal of those two notes, where there is a renewal, the new note is brought in and exchanged over the counter for the note that is in our files, and it is not credited to the account, and the old note is charged on. The old notes for [930] \$150,000 were charged against this account for which credit was *passed* due, credit of the Scandinavian-American Building Company, I suppose those old notes went back into the files of the building company. I simply wrote on this note, "Scandinavian-American Building Company memo," there was no signature on it. This \$200,000 note was never executed by the building company itself, but the note was passed to their credit

(Testimony of W. E. Morse.)

on the books. I do not consider this a note, it was a memorandum put among the notes, which were collaterally secured.

Cross-examination.

(By Mr. HOLT.)

I think the endorsement on this jacket was all written at the same time.

Cross-examination.

(By Mr. METZGER.)

Exhibit 185 shows that the \$150,000 was charged up to the building company on the same day I passed on the credit to them on the strength of this memorandum note. [931]

**Testimony of Forbes P. Haskell, Jr., for the Receiver. (Recalled).**

FORBES P. HASKELL, Jr., being recalled, testified as follows:

Exhibit 338 (Receiver) is my check on the National Bank of Tacoma for \$72,366.35, which I drew to the order of the National Bank of Tacoma for the purpose of buying the draft with which to purchase the mortgage from the Penn Mutual, assignment of the mortgage from the Penn Mutual.

**Receiver's Exhibit No. 338.**

"No. 157.

"Office of Bank Commissioner Liquidating Scandinavian-American Bank of Tacoma.

Tacoma, Washington.

Tacoma, Wash., Mar. 2, 1921.

PAY TO THE ORDER OF YOURSELVES \$72,-  
366,35. Seventy-two Thousand Three Hundred  
Sixty-six Dollars *Dollars* Thirty-five cents.

For draft Penn Mutual Life Ins. Co., in payment  
of 1st mortgage on Property at 11th & Pac. Ave.  
To National Bank of Tacoma 34-1.

Tacoma, Washington.

(Signed) F. P. HASKELL, Jr.,

Special Deputy Bank Commissioner."

I received the assignment of the mortgage marked  
Exhibit 339 (Receiver).

**EXHIBIT No. 339.**

This exhibit is the original of the assignment of  
mortgage, exemplified copy of which is hereinbe-  
fore set out as Receiver's Exhibit 329.

A telegram marked Exhibit 340 (Receiver) I  
found among the files of the bank.

**Receiver's Exhibit No. 340.**

Telegraph Blank of Western Union.

"A 10 4 PO 70 Blue

1919 Nov 11 PM 2 19

D San Francisco Calif 1135 A 11

O S Larson

Scandinavian Amn Bank Tacoma Wash.

Just had a talk with Mr. Metson regarding our

(Testimony of J. V. Sheldon.)

meeting yesterday in which Chilberg Lane and myself took part In view of the present outlook do not think advisable for you to proceed with building construction or anything which will have any tendency of tying up money from your institution in Tacoma I will endeavor [932] to free all obligations from myself and my institutions due your bank at first opportunity

JAFET LINDBERG." [933]

**Testimony of J. V. Sheldon, for the Receiver.**

J. V. SHELDON, a witness called on behalf of the Receiver, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

Exhibit 341 (Receiver) is a cashier's check, Scandinavian-American Bank, in favor of the Penn Mutual Life Insurance Company, \$70,000.00. Attached to Exhibit 341 is a copy of a letter written by Mr. Larson to me under date of September 30, 1920. At that time Mr. Larson was in New York.

**Receiver's Exhibit No. 341.**

"SCANDINAVIAN-AMERICAN BANK OF  
TACOMA.

34-5

Tacoma, Washington, Sept. 8, 1920.

No. 35932.

Pay to the order of Penn Mutual Life Ins. Co.



\$70,000.00/100. Seventy Thousand Dollars *Dollars*.

(Signed) N. A. DONELSON,  
A. Cashier."

Cashier's Check.

The following endorsement appears on the back of the above check—"not used."

(Attached thereto:)

"September 30th, 1920.

Mr. J. V. Sheldon,  
Vice-President

Scandinavian-American Bank,  
Tacoma, Washington.

Dear Mr. Sheldon:

Enclosed herewith please find confirmation of telegram sent you this afternoon. We are returning herewith Cashier's check No. 35932 for Seventy thousand dollars (\$70,000), issued September 8th, 1920, payable to the Penn Mutual Life Insurance Company.

The company have kindly consented to an indefinite extension of its payment. You will kindly have check cancelled upon receipt of this letter.

Mr. Simpson gave the Penn Mutual Life Insurance Company his personal check drawn on us for \$1933.52. When this check comes through for payment will you kindly credit his account with this amount.

The receipt covering the interest payment is also herewith enclosed.

We have a meeting to-morrow morning with the officials of this same company, and have very good

hopes of securing an advance on our building mortgage in the sum of \$400,000, in addition to the loan which they already have.

With best wishes, I am,

Very sincerely,"

OSL/NWS.

Enclosures." [934]

Exhibit No. 342 (Receiver) was a memorandum written to me by Mr. Larson on September 23d, just prior to going East.

**Receiver's Exhibit No. 342.**

"September 23, 1920.

Memorandum of Mr. Sheldon:

We should have the T. W. Little automobile account and all the others straightened out and put on a better footing, particularly the Pacific Car Company, and as soon as Mr. Davis comes home something ought to be done to get some of those cars moved and the bank line reduced. Leonard has promised to reduce \$7,500 this month and \$3,000 each month thereafter.

Have a conference with the County Commissioners regarding the McHugh contract, and ascertain definitely whether or not they are going to be able to pay McHugh any money as soon as the estimates are issued. McHugh has requested another \$5,000 which I held off, telling him that we would investigate the condition in the courthouse before we went any further.

I wish you would go to Portland and if necessary, to Salem, on the Phez business and collect that

\$40,000. The note is with the Northwestern National Bank and you might talk the matter over with Mr. Olmstead and see if you can get any more light on the subject from him.

Withhold payment of building vouchers until credit situation is straightened out and we are able to get an advance in large amount on the building mortgage. I do not see that any particular harm can come from this and as soon as I get East we will explain the matter to McClintic-Marshall in case they should become uneasy.

Get after the past due notes with Mr. Ogden and Mr. Bean and have them all renewed whenever they cannot be paid.

Bean has some blanks that he was working up on the Lindeberg line.

Try to induce the large borrowers to increase their balances like Lindberg, and others of the same stripe.

Yours very truly,

\_\_\_\_\_,  
President.

OSL:C.

Exhibit No. 343 (Receiver) is a telegram dated September 30th.

**Receiver's Exhibit No. 343.**

(The following is on regular Western Union telegram blank.)

"A131PO 38 Blue 1920 Sep 30 AM 10 55

Philadelphia Penn 107P 30

J V Sheldon

Scandinavian-American Bank Tacoma Wash.

Will interview comptroller of currency next week regarding National charter before examination loans should be reduced telegraph amount deposit to-day ascertain whether army bank designated Government depository good prospect securing temporary real *state* loan withhold payment steel invoices.

LARSON." [935]

Exhibit No. 344 (Receiver) is a telegram from Mr. Larson and signed "Jack." I asked him when he came back what was the reason for signing so and I think he told me it was just a mistake of the wire. I received it from him.

**Receiver's Exhibit No. 344.**

(The following is on regular Western Union telegram blank.)

"A288PO 34NL

1920 Oct 1 PM 4 41

BC Philadelphia Pa 1.

J V Sheldon

Scandinavian American Bank Tacoma Wash.

Get steel work started Monday sure Will arrive Chicago early Monday morning and will have substantial relief Tuesday or Wednesday Leaving here Sunday evening Get definite assurance from Nome covering boullion shipment Best wishes.

JACK."

Exhibit No. 345 (Receiver) is a telegram dated October 1st, 1920, which I received from Mr. Larson. During that period he was attempting to obtain an advance on the Simpson Mortgage.

(Testimony of J. V. Sheldon.)

**Receiver's Exhibit No. 345.**

(Following is on regular Western Union telegram blank.)

"A96PO47 1920 Oct 1 AM 10 24

BC Philadelphia Pa 101P 1

J V Sheldon

Scandinavian-American Bank Tacoma Wash.

Suggest offer exchange paper with Seattle securing temporary return of Liberty and municipal bonds for use with Tacoma pending large advance against building mortgage Unless we obtain action here to-morrow will go to Chicago Monday Instruct Allen Portland judgement will be adjusted when Lindberg returns from Nome.

O S LARSON."

(By the COURT.)

I had no understanding with Larson that when he sent a telegram signed Jack I would keep quiet about it, I showed him those wires upon his return and he told me that they were his wires. I called those to his attention upon his return. I did not say anything at that time about those two telegrams signed Jack indicating that I wondered why they were signed that way, I just thought there was some reason [936] that Larson signed them that way, so that possibly they would not be called to anybody's attention over the telephone line, something to that effect.

(By Mr. OAKLEY.)

Larson went East the latter part of September, I think on the 24th of September. At that time, I



(Testimony of J. V. Sheldon.)

had discussed with him the matter of taking an assignment of this mortgage and he went East to see if he could get some money in the East on the Simpson mortgage, and it was later than that we took the assignment. I think it was about October 7th. If I remember correctly he took the mortgage East with him to get an assignment from Simpson.

Exhibit 346 is a telegram I received from Mr. Larson, also signed "Jack."

**Receiver's Exhibit No. 346.**

(Following is on regular Postal Telegraph blank.)

"9zq— 73 N. L. 7-58 am— 8.  
(G) Chicago, Ills. Oct. 7-20.

J. V. Sheldon,

Vice-Prest., Scan.-Amn. Bank, Tacoma, Wn.

Was in Milwaukee yesterday tried everything here without success Stop Penn. Mutual seriously interested one year loan details will have to be worked out with Boyle next week Stop Do nothing McClintic-Marshall until last car received Stop Simpson left for Boston to-day trying Evans estate Hancock and Massachusetts Mutual Stop Leaving for the West to-night all tired out spending Saturday and Sunday in Minnesota hunting for new inspirations.

Sincerely your friend,

JACK."

I received Exhibit No. 347 (Receiver), which is a telegram dated October 5th, from Larson.

(Testimony of J. V. Sheldon.)

**Receiver's Exhibit No. 347.**

(Following is on regular Postal Telegraph blank.)

“58zq— 74 Collect. 1-34 pm.  
(G) Chicago, Ills. Oct. 5-20.

J V Sheldon,

V. P. Sean.-Amn. Bank, Tacoma, Wn.

You are allowed forwarding Banks note merchants loan and trust ninety days mixed collateral and have release and return Paulhamus notes now with them soon maturing Stop This will give you fruit notes free Stop Penna. Mutual extension and this all have been able accomplish to date Stop Telegraph [937] Metson Cross Lindblom Lindeberg that Pioneer output must be applied upon Seattle stock advances or suits will have to be brought against interested parties.

LARSON.”

Cross-examination.

(By Mr. FLICK.)

When these various telegrams came I discussed them with the other directors. I think the other directors knew of it when Larson went East with this Simpson mortgage to get it assigned. The purpose was to get the money on the mortgage, to use the money on these building operations and to cancel the obligations the building company owed to the bank. If the card which you show me covers all the loans, it does not show a loan to the building on that date. This other card shows that

(Testimony of J. V. Sheldon.)

notes had been cancelled off from there and entered under stock and bonds. It does not show whether there was any overdraft at that time. At that time the bank apparently had no note obligations from the building company and owed all the stock of the building company, according to the books. I knew it but objected to it. At that time the bank also had the agreement of the building company to give it \$350,000 of second mortgage bonds on the building, for which later Drury and I issued our notes for \$365,000. I do not know whether that would be a substitute for the certificate or not, we executed that to the bank so they would have something to show for the transfer of the property in addition to the agreement and in addition to the stock that was on the books that way. I knew at that time that the \$600,000 mortgage was to be a first lien upon the property. I assume all the directors knew that. And I knew there was the Penn Mutual mortgage which was to be wiped out eventually. The money derived from this \$600,000 mortgage was not to be used as completion [938] money. There was to be an advance of that mortgage that was to be used in the construction. It is true that the Metropolitan Life Insurance Company never agreed to advance the money until the building was completed.

Redirect Examination.

(By Mr. OAKLEY.)

I remember the letter of June 21, 1920, from the Metropolitan Life Insurance Company to the bank

(Testimony of J. V. Sheldon.)

(Exhibit 214) and from that date on all the correspondence and these telegrams were directed to the attempt to obtain money from other sources before the bank had the assignment.

“Q. And not being able to get the money from other sources, the bank took the assignment to protect itself? A. That is true.

Mr. METZGER.—We object as calling for a conclusion of the witness.

The COURT.—Objection sustained.

Mr. METZGER.—I move to strike this answer.

The COURT.—The answer is all right so far as the attitude of the witness is concerned, that explains his conduct or his actions, but standing as an understanding of the situation it is objectionable.

Mr. OAKLEY.—It looks to me as though he is qualified to testify, as one of the vice-presidents of the institution and one of the trustees of the institution.

The COURT.—I will not strike out the answer, but I could not base a finding that the institution took it for the reason, right on that bald statement alone.” (No exception asked or allowed.)

Cross-examination.

(By Mr. STILES.)

I should say that Larson was representing everybody concerned in the bank and the building company while he was in the East. I represented the bank, Mr. Larson and Mr. Drury were the active men in charge of the building company and it is true

(Testimony of J. V. Sheldon.)

that Mr. Larson was at that time the President and Manager of the bank and Mr. Drury was chairman of the Board and they were both officers of the building company. I believe [939] that all the directors of the bank knew that Drury and Larson were handling the affairs of the building company. Mr. Drury represented the building company in making these various transactions, notes and assignments of mortgage.

“Q. (By the COURT.) Was there anybody actively representing the building company, who was not prominently connected with the bank and responsible for the activities of the bank? A. No.”

It is also a fact that Mr. Larson was the real active official of the bank in the sense of directing its policies, and he was really the active party directing the policies of the building company and these facts were known to both boards.

Cross-examination.

(By Mr. OAKLEY.)

The telegrams received by me, Exhibit 343, 345, 346, 347, so far as they refer to the securing of any advances, all referred to one proposition, about one proposition, about securing advances on this \$600,000 mortgage. [940]



**Testimony of A. T. Geiger, for the Receiver.**

A. T. GEIGER, a witness called by the Receiver, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I was note teller and assistant cashier of the Scandinavian-American Bank for over 12 years. I have made an examination of the records of the Scandinavian-American Bank of Tacoma to ascertain how much the Scandinavian-American Building Company was indebted to the bank on October 7th, 1920, and find that there was an overdraft of \$93,196.61 and no loans. On October 17, 1920, there was an overdraft of \$118,597.94 and no loans. On December 9, 1920, there was an advance of \$200,000 and on the last day of December a check was taken from the building company and carried as we would a loan for \$9,133.25. On January 15th, 1921, the day the bank was closed, the building company owed the bank \$856,979.67. That amount includes the \$200,000 stock transaction and the \$350,000 second mortgage bond transaction. I did not go to the records of the bank to determine what was done in relation to the payment for the real property; I simply took the value of this property as it was carried on the books then and assumed that since they had given nothing for it that they therefore owed it. I think that this estimate of mine will really have to be corrected, and it would also have to be corrected as to the interest amount upon these prop-

(Testimony of A. T. Geiger.)

erties, except though, there is another item of \$65,000 paid for the Drury lots. I made that statement showing what the bank had invested in the Building Company at that time. As far as the agreement, stock and other matters pertaining to that, I am not familiar. That is exactly how this shows on the books, as a debt owed by the building [941] company to the bank. It is an account on the books. The \$9,133.00 check is carried as a loan to the Building Company on the bank's books, and represents interest on the indebtedness of the building company to the bank up to the 31st day of December, 1920, it is interest on the \$200,000 item and the \$350,000 item and the \$65,000 item.

“Q. In other words, around toward the end of December, some time after the bank examiner had been there, a check was constructed by the Building Company for interest on these very three amounts we have been talking about; isn't that a fact?

A. Yes.

Q. And that is also in there? A. Yes.

Q. And up to that time none of these amounts had been carried in bills receivable, had they?

A. Let me see that statement.

Q. None of these three amounts, I believe (indicating).

A. The stock, the Banking-house or \$65,000—no they were not carried as bills receivable.”

This statement was then introduced in evidence as Exhibit 348, and is as follows:

**Receiver's Exhibit No. 348.**

"Scandinavian-American Building Company's Indebtedness to Scandinavian-American Bank of Tacoma on January 15, 1921.

	Prin.	Int.	Total
Stock .....	\$200,000.	\$500.	\$200,500.
Int. 6% 12/31/20 to 1/15/21 15 days Loan .....	200,000.	1,200.	201,200.
Int. 6% 12/9/20 to 1/15/21 1 mo. 6 days Loan (check) ..	9,133.25	22.83	9,156.08
Int. 6% 12/31/20 to 1/15/21 15 days Overdraft .....	32,746.42		32,746.42
Banking House .....	350,000.	875.	350,875.
Int. 6% days Scand. Amer. Bldg. Co. 12/31/20 to 1/15/21 days Scand. Amer. Bldg. Co. ....	65,000.	162.50	65,162.50
Acct. on Genl. Ledger (Drury lot) .....			
Int. 6% 12/31/20 to 1/15/21 15 days .....			
	\$856,879.67	\$2,760.33	\$859,640.00

[942]

**Testimony of O. A. Jelleberg, for the Receiver.**

O. A. JELLEBERG, a witness called on behalf of the Receiver, testified as follows:

**Direct Examination.**

(By Mr. OAKLEY.)

I was employed by the Scandinavian-American Bank up to the time that it closed, as auditor and assistant cashier. Prior to June 16th, 1919, the capital stock of the Scandinavian-American Bank was \$200,000. There were 53 stockholders. On June 16, 1919, it was increased to \$400,000 and the trustees were Gustaf Lindberg, George Williamson, J. E. Chilberg, Chas. Drury, Jafet Lindeberg and James R. Thompson, who held altogether 601½

(Testimony of O. A. Jelleberg.)

shares of the par value of \$100. After June 16, 1919, when it was increased to \$400,000, there were 189 stockholders. The names of the directors and the number of shares held by them, respectively, are as follows:

Gustaf Lindberg	861½ shares
Charles Drury	150 “
O. S. Larson	411½ “
Frank Lamborne	100 “
George Williamson	20 “
Total	398 shares

so that the directors held 398 shares out of a total of 4,000 shares. On April 12th, 1920 the capital was increased from \$400,000 to one million dollars. On January 1st, 1921, the trustees together with the amount of the stock owned by them were as follows:

Gustaf Lindberg	861½ shares
Dean Johnson	250 “
Charles Drury	50 “
J. V. Sheldon	100 “
O. S. Larson	1443½ “
Frank Lamborne	100 “
George Williamson	10 “

They held a total of 2040 out of 10,000 shares. At that time there were 526 stockholders. [943]

I made out the statement of the bank which was printed in accordance with the State law, and which is marked Exhibit 349 (Receiver). This statement is taken from the records of the bank. The \$350,000 item is carried in that statement as Banking House and encumbrances. The \$200,000

(Testimony of O. A. Jelleberg.)

stock item is in the total carried as stocks and securities. When this property was transferred to the Scandinavian-American Building Company it was not taken off of the books of the Scandinavian-American Bank.

**Receiver's Exhibit No. 349.**

Tacoma Daily Ledger, Nov. 30, 1920. (Advertisement).

“(Official Publication.)

Report of the Financial Condition of the  
SCANDINAVIAN-AMERICAN BANK.

Located at Tacoma, Pierce County, State of Washington, at the close of business on the 15th day of November, 1920.

**RESOURCES.**

Loans and discounts, \$4,250,700.17	
less notes and bills rediscounted	
\$265,900.00 .....	\$3,984,800.17
Overdrafts .....	56,792.96
Customers' liability account letters of credit and acceptances .....	NONE
U. S. Bonds, Certificates of Indebtedness, War Savings and Thrift Stamps .....	39,999.58
Stock of Federal Reserve Bank.....	NONE
Other bonds and warrants .....	1,250,066.56
Other stocks, securities, claims, judgments, etc. ....	566,656.88
Banking house, \$280,000.00 plus encumbrances \$70,000.00 .....	350,000.00



(Testimony of O. A. Jelleberg.)

Other real estate owned, \$223,938.19;	
less encumbrance, none .....	223,938.19
Furniture and fixtures .....	NONE
Cash on hand, clearing house items, and due from approved reserve agents (Legal reserve).....	605,768.16
Outside checks and other cash items..	192,565.10
Due from banks not approved reserve agents .....	5,859.45
Deposit with Guaranty Fund Board.	NONE
Expenses in excess of earnings.....	2,196.51

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    Total .....\$7,278,643.56

## LIABILITIES.

Capital stock paid in .....	\$1,000,000.00
Surplus fund .....	210,000.00
Demand deposits .....	2,808,214.96
Time deposits .....	2,500,428.60
Bills payable .....	690,000.00
Mortgages payable .....	70,000.00

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    Total .....\$7,278,643.56"

Acknowledged by M. M. Ogden, Cashier, on November 29, 1920, before A. T. Geiger, Notary Public, residing at Tacoma.

“Correct, Attest: CHARLES DRURY,

O. S. LARSON,

Directors.” [944]

Cross-examination.

(By Mr. HOLT.)

This item of \$280,000 is supposed to be the cost

(Testimony of O. A. Jelleberg.)

of the property to the bank, plus the mortgage, so that if the bank paid the mortgage, the item would be \$350,000.

Cross-examination.

(By Mr. FLICK.)

This \$350,000 item was not duplicated in the securities for the reason that the \$350,000 of second mortgage bonds had not been delivered to the bank. That statement contains the \$200,000 stock item, as well as the total value of the lots. [945]

**Testimony of C. C. Sharpe, for the Receiver.**

C. C. SHARPE, a witness called on behalf of the Receiver, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

Other charges of interest than the \$9,133 charge were made on September 22d, 1920, \$25,118.77 made up of the following details:

\$769.17 was interest on the value of the Drury Lots, \$65,000; \$2,619.76, interest at 6% per annum from the date of various entries to the 31st day of July, 1920, on a total of \$82,623.81; advanced by the Scandinavian-American Bank to the Scandinavian-American Building Company between October 14, 1919 and April 6th, 1920. \$729.84 interest on some advances from July 31st, 1920 to September 22d, \$21,000 was charged as interest on the banking house investment of \$350,000 from December 1st, 1919 to December 1st, 1920, at 6%. These

(Testimony of O. A. Jelleberg.)

Other real estate owned, \$223,938.19;	
less encumbrance, none .....	223,938.19
Furniture and fixtures .....	NONE
Cash on hand, clearing house items, and due from approved reserve agents (Legal reserve).....	605,768.16
Outside checks and other cash items..	192,565.10
Due from banks not approved reserve agents .....	5,859.45
Deposit with Guaranty Fund Board.	NONE
Expenses in excess of earnings.....	2,196.51

---

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---

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Directors.” [944]

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    This item of \$280,000 is supposed to be the cost

(Testimony of O. A. Jelleberg.)

of the property to the bank, plus the mortgage, so that if the bank paid the mortgage, the item would be \$350,000.

Cross-examination.

(By Mr. FLICK.)

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(By Mr. OAKLEY.)

Other charges of interest than the \$9,133 charge were made on September 22d, 1920, \$25,118.77 made up of the following details:

\$769.17 was interest on the value of the Drury Lots, \$65,000; \$2,619.76, interest at 6% per annum from the date of various entries to the 31st day of July, 1920, on a total of \$82,623.81; advanced by the Scandinavian-American Bank to the Scandinavian-American Building Company between October 14, 1919 and April 6th, 1920. \$729.84 interest on some advances from July 31st, 1920 to September 22d, \$21,000 was charged as interest on the banking house investment of \$350,000 from December 1st, 1919 to December 1st, 1920, at 6%. These

(Testimony of C. C. Sharpe.)

charges were entered upon the books of the Scandinavian-American Building Company under Mr. Larson's direction.

Cross-examination.

(By Mr. FLICK.)

These entries were made on September 22d, 1920. The \$9,133.00 interest charge should be in addition to that. The item of \$82,623.81 was not all for building materials and labor there was included in that the expense of canceling leases of the old building; hotel and railway expenses for architects and others connected with the building company, \$65,000 for the purchase of the Drury lots and various expenses in connection with the plans for the new building. Revenue stamps on mortgages, etc. The \$65,000 item is, of course, the largest. No labor or material entered into this. There is the expense of fencing or board walk around the bank [946] building at the time they commenced to demolish the old building, \$225.00, and this was all for expenses before the building was started.

Cross-examination.

(By Mr. METZGER.)

None of these items appeared on the books of the building company until I was directed to enter them in the latter part of September. There was nothing entered upon the books of the building company with reference to the liability for the payment of the three lots. I had nothing to do with the real estate except the payment of taxes



(Testimony of C. C. Sharpe.)

and had no record showing an obligation of \$350,000 covering the purchase price of the three lots.

Cross-examination.

(By Mr. BONNEVILLE.)

In entering these items on the books I took Mr. Larson's instruction because he was actively engaged in the building company's work.

Cross-examination.

(By Mr. FLICK.)

I received instructions, also, from Mr. Drury, from time to time, as well as from Larson and other officers of the building company.

(By The COURT.)

The \$21,000 item was interest on the banking house investment and does not include the Drury lot.

(By Mr. OAKLEY.)

On November 30, 1920, a check for \$7,069.14 was made to the order of William Turner, County Treasurer, covering taxes on the lots, 11 and 12, for the year 1919, that does not include taxes on the Drury lot. That item was not included in the interest charges which I made a statement about.

The ledger sheet of the Scandinavian-American Building [947] Company from its books of account kept by witness was introduced and received in evidence as Exhibit No. 350. [948]



[illegible]



[illegible]





(Testimony of C. C. Sharpe.)

Cross-examination.

(By Mr. STILES.)

That was paid by the check of the building company on the bank. At that time there was an overdraft of about \$10,000. This amount of taxes was added to the overdraft. [949]

**Testimony of A. T. Geiger, for the Receiver.**

A. T. GEIGER, a witness called on behalf of the Receiver, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

Exhibit No. 234 is the general ledger sheet of the account, stocks and securities of the bank, and it showed that under date of June 25, 1920, a charge of \$200,000 to the account of stocks and securities for payment in full for stock subscriptions, Scandinavian-American Building Company.

Exhibit 351 (Flick) is another general sheet showing the charge of \$65,000 under date of February 9th, 1920, for the purchase from Charles Drury and Drury The Tailor, of Lot No. 10. This is the general ledger sheet of the bank and not a real estate account. It is an account receivable, of the bank against the building company, there was interest charged on the account but it was apparently paid off because the balance in the account is \$65,000. There is a charge against the building company on February 9th, 1920, for interest from December 1st, 1919 of \$512.78, but there was an error in that, and under date of

(Testimony of A. T. Geiger.)

March 11th, 1920, it was corrected and there is a charge against the building company account, an additional charge for interest on the purchase of the Drury property of \$276.33. It was not carried as a note, it was carried as an account against the building company.

### Exhibit No. 351.

(Flick.)

Account of the Scandinavian-American Bank With  
the Scandinavian-American Building Company,  
Being Original Ledger Sheet of the Bank.  
[950]

"Date	Description of Items	Total Debits.	Dr. Balance
May 8, 1917.	Fw'd from old Ledger.....		\$210,000.
Aug. 24, 1917.	Payment of installment due Penn. Mutual Life Ins. Co. N. Y. on Mtg. Sep. 1, 1917, N. Y. draft.....	\$10,000.	220,000.
Aug. 27, 1918.	Pt. payment 1st mtge. Ren. to Penn Mutual Life.....	5,000.	225,000.
Oct. 11, 1918.	Pmt. Second Mtg. note to Puget Sound Mtg. Co. by J. E. and Anna Chilberg...	50,000.	275,000.
Nov. 27, 1918.			
Aug. 26, 1919.	Pt. payment on mtge of \$75,000 to Penn Mutual L. Ins. Co..	5,000.	280,000.
	Balance Forwarded to New Ledger. [952]		

The \$350,000 item was not carried as an account. The \$9,133.00 item for interest included interest on the \$200,000 stock subscription and also interest on the \$65,000 item and also on the \$350,000 item. Exhibit No. 351 shows only the advance on the Drury lot.

**Exhibit No. 352.**

(Flick.)

Account of the Banking House of the Scandinavian-American Bank, Being Original Ledger Sheet of the Bank—Account No. 25, Sheet No. 1.









**Testimony of Guy E. Kelly, for the Receiver.**

GUY E. KELLY, a witness called on behalf of the Receiver, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I was appointed attorney for Mr. Haskell in liquidating the affairs of the Scandinavian-American Bank of Tacoma and found Exhibit No. 247, the note dated October 7th, 1920, signed by the Scandinavian-American Building Company, by Chas Drury, President, J. V. Shelton, Secretary, payable to the Scandinavian-American Bank of Tacoma in the sum of \$363,825.00 two or three days after the 17th of January, 1921, when we went down there, among other papers in the bank in the vault.

Cross-examination.

(By Mr. METZGER.)

I think I found the \$600,000 mortgage with the unrecorded assignment thereof at the same time and in the same tray that I found this note, but I would not be sure of that.

Cross-examination.

(By Mr. STILES.)

I have heard that the notation attached to this note was written either by Williamson or Freeman. Freeman, I think. [953]

**Receiver's Exhibit No. 330.**

SEAL OF THE STATE OF WASHINGTON.  
CLAUDE P. HAY,  
Bank Commissioner.

J. C. MINSHULL,  
Deputy Bank Commissioner.

STATE OF WASHINGTON.  
BANKING DEPARTMENT.  
OLYMPIA.

No. 47348.

To Whom It May Concern: GREETING:

In compliance with the provisions of Chapter 80 of the Laws of 1917, of the State of Washington, and by virtue of the authority of said law, I hereby designate and appoint Forbes Haskell, Special Deputy Bank Commissioner, as agent to assist me in the duty of liquidating and distributing the assets of the Scandinavian-American Bank, a banking corporation of Tacoma, Washington, and this shall be evidence that said Forbes Haskell has full authority and power to perform any and all duties attached by law to said office of Special Deputy Bank Commissioner.

Given under my hand and official seal this SEVENTEENTH day of JANUARY, 1921.

CLAUDE P. HAY,  
Bank Commissioner.

[Seal of Bank Commissioner of the State of Washington.]

Filed in Superior Court, Apr. 13, 1921. Geo. F. Murray, Clerk. W.A.S., Deputy. [954]

FOR PIERCE COUNTY.

No. 47348.

In the Matter of the Insolvency of the SCANDINAVIAN-AMERICAN BANK OF TACOMA,  
a Corp.

CERTIFICATE.

I, Geo. F. Murray, County Clerk, and by virtue of the laws of the State of Washington, *ex-officio* Clerk of the Superior Court of the State of Washington, in and for said County, do hereby certify that the annexed and foregoing is a true and correct copy of the ORDER APPOINTING FORBES HASKELL, special Deputy Bank Commissioner to assist in the duty of liquidating and distributing the assets of the Scandinavian-American Bank, a banking corporation of Tacoma, Washington, in the above-entitled action, as the same now appears on file and of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 28th day of October, 1921.

[Seal] (Signed) GEO. F. MURRAY,  
Clerk. [955]

This exhibit also contains a certificate of M. L. Clifford, Judge of the Superior Court of the State of Washington for Pierce County, in the effect that George F. Murray is the Clerk of the Superior



Court of said County and a certificate of said George F. Murray as Clerk of said Court to the effect that M. L. Clifford is Judge of said Court, both certificates being dated November 8, 1921.

**Receiver's Exhibit No. 331.**

SEAL OF THE STATE OF WASHINGTON.  
CLAUDE P. HAY,

Bank Commissioner.

J. C. MINSHULL,

Deputy Bank Commissioner.

STATE OF WASHINGTON.

BANKING DEPARTMENT.

OLYMPIA.

No. 47348.

KNOW ALL MEN BY THESE PRESENTS:

In compliance with the provisions of Chapter 7 of the laws of 1921 and by virtue of the authority of said law, I, John P. Duke, Supervisor of Banking of the State of Washington, do hereby certify that I have this day appointed Forbes P. Haskell, Jr., Special Deputy Supervisor of Banking in and for the liquidation of the business, assets and affairs of the Scandinavian-American Bank, an insolvent State Banking Corporation of Tacoma, Washington, with full power and authority to discharge all the duties of said office as provided by law. [956]

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Supervisor of

(Testimony of Guy E. Kelly.)

Banking, at the Capitol in the City of Olympia, Washington, this 1st day of April, 1921.

JOHN P. DUKE,  
Supervisor of Banking.

[Seal of Supervisor of Banking of the State of Washington.]

Approved:

E. L. FARNSWORTH,  
Director of Taxation and Examination.

Filed in Superior Court. Apr. 13, 1921. Geo. F. Murray, Clerk. W. A. S., Deputy.

This exhibit is certified to by George F. Murray, Clerk of the Superior Court of the State of Washington, for Pierce County, on October 28, 1921, and also contains a certificate of M. L. Clifford, Judge of the Superior Court of the State of Washington for Pierce County, in the effect that George F. Murray is the Clerk of the Superior Court of said County and a certificate of said George F. Murray as Clerk of said Court to the effect that M. L. Clifford is Judge of said Court, both certificates being dated October 28, 1921. [957]

**Receiver's Exhibit No. 332.**

550216.

(Internal Revenue \$65.00 Feb. 9 '20 D. T. T.)

The Grantor, Drury, The Tailor, Incorporated, a corporation organized under the laws of the State of Washington, having its principal place of business at Tacoma, County of Pierce, State of Washington, for and in consideration of Ten (\$10.00)

Dollars in hand paid, hereby conveys and warrants to Scandinavian-American Building Company, a corporation the following described real estate situate in the County of Pierce, State of Washington, to wit:

Lot 10 in Block 1003 as the same is known, shown and designated upon a certain plat filed for record with the auditor of Pierce County, Washington, on February 3, 1875, entitled "Map of New Tacoma, W. T."

Subject to

Dated this 10th day of November, 1919.

Signed in the presence of:

DRURY, THE TAILOR, INCORPORATED. (Seal)

By CHARLES DRURY,  
President. (Seal)

By WILLIAM DRURY,  
Secretary. (Seal)

[Drury The Tailor, Inc.—Corporate Seal—Tacoma, Wash.]

State of Washington,  
County of Pierce,—ss.

On this 10th day of November, 1919, before me personally appeared Charles Drury and William Drury to me known to be the President and Secretary respectively of the corporation that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath stated that they were authorized to execute said instru-

ment and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

E. F. FREEMAN,

Notary Public in and for the State of Washington,  
Residing at Tacoma.

[E. F. Freeman, Notary Public, State of Washington.]

Commission expires Sept. 24, 1920. [958]

EXHIBIT 332 (Continued).

State of Washington,  
County of Pierce,—ss.

I, C. A. Campbell, County Auditor in and for Pierce County, State of Washington do hereby certify that the within and foregoing is full, true and correct copy of that certain Deed filed for record in this office on the 9th day of February, 1920 at 3:24 P. M. and recorded in Volume 436, page 381 of Deed Records under Auditor's Fee No. 550216.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 8th day of November, A. D., 1921.

[Seal] (Signed) C. A. CAMPBELL,  
Auditor, Pierce Co., Washington.

Compared by C. & G. [959]

## EXHIBIT 332 (Continued).

In the Superior Court of the State of Washington  
for Pierce County.

State of Washington,  
County of Pierce,—ss.

I, Ernest M. Card, Judge of the Superior Court of the State of Washington, for Pierce County, do hereby certify that C. A. Campbell, whose name is subscribed to the preceding exemplification, is the County Auditor of said Pierce County, and is the proper officer to make said exemplification, and that full faith and credit are due to his official acts.

I further certify that the seal attached to the exemplification, is the official seal of the County Auditor of said Pierce County, and that the attention thereof is due form and according to the form of attestation in this state, and is made by the proper officer.

[Seal] (Signed) ERNEST M. CARD,  
Judge of the Superior Court.

Dated, Tacoma, Washington, this 8th day of  
November, A. D. 1921. [960]

In the Superior Court of the State of Washington  
in and for Pierce County.

State of Washington,  
County of Pierce,—ss.

I, Geo. F. Murray, County Clerk, and *ex-officio* Clerk of the Superior Court of the State of Washington, for Pierce County, do hereby certify that



(Testimony of Guy E. Kelly.)

C. A. Campbell, whose name is subscribed to the preceding certificate, is Auditor in and for Pierce County, State of Washington, duly elected, sworn and qualified, and that the signature of said Auditor to said Certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Superior Court, at Tacoma, the County Seat of said County, this 8th day of November, 1921.

[Seal] (Signed) GEO. F. MURRAY,  
County Clerk, and *ex-officio* Clerk of the Superior Court of the state of Washington, for Pierce County.

This exhibit also contains a certificate of Ernest M. Card, Judge of the Superior Court of the State of Washington for Pierce County, in the effect that George F. Murray is the Clerk of the Superior Court of said County and a certificate of said George F. Murray as Clerk of said Court to the effect that Ernest M. Card is Judge of said Court, both certificates being dated November 8th, 1921.  
[961]

Exhibits 237, 238, 239, 240, 244 and 245 were certified copies of the records of the Auditor of Pierce County, Washington, showing the various instruments affecting the title to the property which are set forth herein in full under Exhibits Nos. 322 to 329, inclusive. [962]

Exhibits 333 and 334 were exemplified copies of Exhibits 180 and 180½, heretofore set out herein.  
[963]

Minute-book of Scandinavian-American Building Company admitted as Exhibit 178 (Flick), as follows:

**Exhibit No. 178. (Flick.)**

**MINUTE-BOOK OF SCANDINAVIAN-  
AMERICAN BUILDING COMPANY.**

**Contents:**

- Page 1. Certificate of Secretary of State showing filing of Articles of Incorporation Nov. 21, 1919.
- Pages 2, 3, 4 and 5. Articles of Incorporation.
- Page 6. Waiver of Notice of first meeting by Trustees Unsigned.
- Page 7. Oaths of Office as trustees by Lindberg, Drury, Lindeberg and Williamson.
- Page 8. Oath of Office as trustees by Thompson unexecuted.
- Pages 9, 10. Minutes of first meeting of Trustees.
- Pages 11 to 16. By-laws.
- Page 18. License to do business, by Secretary of State.
- Page 17. Stock Subscription.
- Page 19. Minutes of special meeting of Trustees.

**MINUTES OF FIRST MEETING OF THE  
BOARD OF TRUSTEES OF SCANDINA-  
VIAN-AMERICAN BUILDING COMPANY.**

The Board of Trustees of SCANDINAVIAN-AMERICAN BUILDING COMPANY met at room 320 Scandinavian-American Bank Building, Tacoma, Pierce County, Washington, on the 25th day of November, A. D. 1919, at the hour of 4:00 in the afternoon thereof, pursuant to agreement and

to written waiver of notice and consent to the holding of the meeting at the time and place above stated.

The following trustees were present, viz:

J. E. Chilberg.

O. S. Larson.

Gustaf Lindberg.

George G. Williamson.

Charles Drury.

The foregoing named trustees having taken and subscribed to the oath of trustees, proceeded to organize the board by the election of J. E. Chilberg as temporary chairman and O. S. Larson as temporary secretary.

Election of Officers:

President: Drury.

Vice-President: Lindberg.

Secretary: Sheldon.

Treasurer: Ogden.

The subscription to the capital stock of the corporation heretofore made was then canvassed and it appearing that all of the capital of the corporation having been subscribed for, on motion duly and regularly made, seconded and carried, the subscription to the [964] capital stock of the corporation was duly ratified, approved and confirmed.

By-Laws Adopted.

General Discussion of Plans, adjourned to call of President.

CHARLES DRURY,  
President.

Attest: \_\_\_\_\_

Secretary.

[Indorsed]: Filed in the United States District Court, Western District of Washington. Oct. 9, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [965]

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**Certificate and Order Settling and Allowing Statement of Testimony.**

This cause came on regularly to be heard this 9th day of October, 1922, pursuant to an order of this Court made and entered in this cause and action on September 6th, 1922, fixing the time for settling and approving the statement of evidence to become a part of the record on appeal of said Court, and it appears to the Court that notice of said hearing and order was duly served upon all parties appearing in this cause; and that written admission of said service is now on file in this cause, and it appearing to the Court that statements of evidence in this cause have been duly and timely lodged in the Office of the Clerk of this Court by appellants, Tacoma Millwork & Supply Company on June 12, 1922; by Ben Olson Company on June 15, 1922; by J. P. Duke, as Supervisor of Banks of the State of Washington on June 29, 1922; by F. P. Haskell, Jr., Receiver of Scandinavian-American Building Company on June 29, 1922, and by Washington Brick Lime and Sewer Pipe Company on July 10, 1922, and due notice of the lodgment of said respective statements of evidence having been regularly served upon all parties; and the complainant, [966] McClintic Marshall Company, and others

have filed objections and amendments to said statements of evidence and the Court having heretofore considered and settled some of the proposed objections and amendments in open Court and ordered that all of the evidence material to an appeal should be embodied in one statement of the testimony, and the same having now been satisfactorily adjusted and settled to conform with all objections as settled; and it further appears to the Court that the foregoing contains all of the testimony material to the hearing of the appeals in said cause, in narrative form and where the testimony herein is set forth in the form of questions and answers it is so set forth that the evidence might be clearly understood.

IT IS THEREFORE ORDERED, that the same be and hereby is settled, approved and allowed as a true, complete and correct statement of all the evidence introduced in said cause material to the hearing of the appeals of Tacoma Millwork & Supply Company, Ben Olson Company, J. P. Duke, as Supervisor of Banks of the State of Washington, F. P. Haskell, Jr., Receiver of Scandinavian-American Building Company and Washington Brick Lime & Sewer Pipe Company.

Done in Open Court this 9th day of October, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern



Division, Oct. 9, 1922. F. M. Harshberger, Clerk.  
By Ed M. Lakin, Deputy. [967]

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**Petition of James P. Duke, Supervisor of Banking  
of the State of Washington, Forbes P. Haskell,  
as Receiver of the Scandinavian-American  
Building Company, Tacoma Millwork Com-  
pany, Ben Olson Company, and Washington  
Brick, Lime & Sewer Pipe Company for Order  
Extending Time to File Record on Appeal.**

The petition of James P. Duke, Supervisor of Banking of the State of Washington, Forbes P. Haskell, as Receiver of the Scandinavian-American Building Company, Tacoma Millwork Company, Ben Olson Company, and Washington Brick, Lime & Sewer Pipe Company respectfully shows that on the 3d day of May, 1922, a decree, denying to the petitioners herein the relief prayed for in their respective answers and cross-complaints, was entered by this court in the above-entitled action, and your petitioners further show that appeals to the Circuit Court of Appeals of the United States for the Ninth Circuit have been heretofore allowed by your Honor, and that citations have been issued by your Honor for all of the undersigned petitioners. And that subsequently your Honor extended said return days upon all of said citations to the 16th day of October, 1922.

That your Honor, pursuant to orders extending time theretofore entered, settled and approved the

statement of [968] evidence on the 9th day of October, 1922.

Your petitioners further show that because of the great number of pleadings and exhibits which are in the record of the trial of the cause before your Honor, and because of the largeness of said record, your petitioners will not be able to file the same in the Circuit Court of Appeals as aforesaid by the 16th day of October, 1922.

The premises considered, your petitioners pray that they be granted an enlargement of time in which to file the record in said Circuit Court of Appeals for the Ninth Circuit, and that they be allowed thirty days from the 16th day of October, 1922, in addition to the time allowed by law, and as in duty bound your petitioners will ever pray, etc.

KELLY & MacMAHON and  
F. D. OAKLEY,

Solicitors for James P. Duke, Supervisor of Banking of the State of Washington.

KELLY & MacMAHON,  
Solicitors for Forbes P. Haskell, as Receiver of the Scandinavian-American Building Company.

EDWIN H. FLICK,  
Solicitors for Tacoma Millwork Company.

STILES & LATCHAM,  
Solicitors for Ben Olson Company.

CHARLES P. LUND,  
DAVIS & NEAL,  
Solicitors for the Washington Brick, Lime & Sewer Pipe Company.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 13, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [969]

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**Order Allowing Additional Time to File Record.**

This cause came on to be heard on the petition of James P. Duke, Supervisor of Banking of the State of Washington, Forbes P. Haskell, as Receiver of the Scandinavian-American Building Company, Tacoma Millwork Company, Ben Olson Company and the Washington Brick Lime & Sewer Pipe Company, defendants and cross-complainants and appellants in the above-entitled cause, praying for an enlargement of time in which to file the record in this cause in the Circuit Court of Appeals of the United States for the Ninth Circuit.

And it appearing to the Court that by reason of the great volume of pleadings and exhibits and of the record, the said appellants will not have time to file the same in the Circuit Court of Appeals of the United States for the Ninth Circuit by the 16th day of October, 1922, which is the time required by law, as extended by order of this court,—

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the said appellants be and they are hereby allowed, in addition to the time allowed by law, as heretofore extended by this Court, thirty days from the 16th day of October, 1922, in which to file the record in this cause in

the Circuit Court of Appeals of the United States for the Ninth Circuit.

Done in open court this 13th day of October, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 13, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [970]

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**Praeceptum for Transcript of Record (Forbes P. Haskell, Jr.).**

To the Clerk of the Above-entitled Court:

You will please prepare a transcript of the record in this cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, under the petition for appeal and the order heretofore entered by said Court allowing said appeal on behalf of Forbes P. Haskell, Jr., as Receiver of Scandinavian-American Building Company, a corporation, and include in said transcript, the following pleadings, proceedings, and papers on file, to wit:

1. Bill of complaint.
2. Motion to dismiss complaint Feb. 7, 1921.
3. Order denying motion to dismiss complaint.
4. Order permitting plaintiff to file amended complaint.
5. Amended complaint.

6. Order appointing Forbes P. Haskell, Jr., Receiver.
7. Order granting leave to sue receiver.
8. Amended answer to amended and supplemental bill of complaint of E. E. Davis & Co. Oct. 19, 1921.
9. Answer to Scandinavian-American Building Company [971] and F. P. Haskell, Jr., as Receiver, to cross-complaint of E. E. Davis & Co.
10. Answer of Scandinavian-American Building Company and F. P. Haskell, Jr., as Receiver, to amended complaint.
11. Motion to strike part of said answer.
12. Order granting motion to strike filed June 27, 1921.
13. Reply of McClintic-Marshall Company to the above answer.
14. Memorandum opinion of the Court.
15. Decree.
16. Order correcting decree.
17. Petition of Forbes P. Haskell, Jr., as Receiver of Scandinavian-American Building Company, a corporation, for appeal.
18. Order allowing above appeal and fixing bond.
19. Bond on appeal.
20. Assignments of error on above appeal.
21. Order continuing cause over term, June 30, 1922.
22. Notice of lodgment of statement of evidence, and acknowledgment of service thereof.
23. Order extending time for filing record, Aug. 30, 1922.



24. Order extending time for filing record, Sept. 6, 1922.
25. Acknowledgment of service of notice of above order of September 6, 1922.
26. Order fixing time for settling and approving statement of evidence.
27. Statement of testimony.
28. Certificate and order settling and allowing statement of testimony.
29. Petition for extending time to file record.
30. Order extending time for filing record, Oct. 13, 1922.
31. Stipulation to omit captions, verifications, etc., from the printed records.
32. Citation issued on behalf of Forbes P. Haskell, Jr., herein above-named and admission of service thereof. [972]
33. *Præcipe* for transcript of record and acknowledgment of service thereof.
34. Clerk's certificate to transcript of record.

Said transcript to be prepared as required by law and the rule of the United States Circuit Court of Appeals for the Ninth Circuit.

F. D. OAKLEY,  
Attorney for F. P. Haskell, Jr., Receiver.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 30, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [973]

**Praeipice for Transcript of Record (Tacoma  
Millwork Supply Company).**

To the Clerk of the United States District Court  
for the Western District of Washington, South-  
ern Division:

You are respectfully requested to make up a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed the Tacoma Millwork Supply Company, among others, in the above-entitled cause, and to include in such transcript of record the following papers and exhibits, to wit:

1. Complainant's amended bill.
2. Cross-complaint and amended cross-complaint and answer of Tacoma Millwork Supply Company.
3. Contract of complainant with Building Company.
4. Memorandum opinion by Court.
5. Exceptions to memorandum opinion.
6. Decree.
7. Exceptions to decree.
8. Notice of appeal.
9. Order allowing appeal.
10. Order enlarging time for preparation and filing of record.
11. Second order enlarging time for preparation and filing of record until July 21st, 1922.
12. Order allowing separate appeal and for diminution of the record.
13. Appeal and cost bond with approval of Court.

14. Assignments of error.
15. Citation.
16. Proof of service of citation.
17. Stipulation waiving captions and waiving printing of certain portions of record.
18. Stipulation to forward and for use of original exhibits and waiving printing of same.
19. Order to forward original exhibits and directions that same need not be printed.
20. Order that captions on certain pleadings may be omitted, and that only certain exhibits or parts thereof need be printed.
21. Notice of lodging of statement of facts.
22. Order continuing time for preparation and filing record to October —, 1922.
23. Certificate and order settling and allowing statement of facts.
24. Certificate of clerk to transcript.

EDWIN H. FLICK,

Attorney for Tacoma Millwork Supply Company.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 28, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [974]

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**Praeceptum for Transcript of Record (Washington Brick, Lime & Sewer Pipe Company).**

To the Clerk of the Above-entitled Court:

You will please prepare a transcript of the record in this cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for

the Ninth Judicial Circuit, pursuant to the petition for appeal and the order allowing the same heretofore entered by said court on behalf of the Washington Brick, Lime & Sewer Pipe Company, a corporation; and include in said transcript the following pleadings, proceedings and papers on file, to wit:

- (1) Amended bill of complaint.
- (2) Order March 23, 1921, appointing Forbes P. Haskell, Jr., as Receiver.
- (3) Order May 21, 1921, making Forbes P. Haskell, Jr., as Receiver, party defendant.
- (4) Order June 14, 1921, granting leave to sue Receiver and consent thereto.
- (5) Answer and cross-complaint of Washington Brick, Lime and Sewer Pipe Company.
- (6) Answer of Scandinavian-American Building Company and Forbes P. Haskell, Jr., as Receiver thereof to the cross-complaint of the Washington Brick, Lime & Sewer Pipe Company.
- (6½) Answer of J. P. Duke as Supervisor.
- (7) Reply of McClintic-Marshall Company to cross-complaint of Washington Brick, Lime & Sewer Pipe Co.
- (8) Answer and cross-complaint of Far West Clay Co.
- (9) Stipulation adopting cross-complaint of Far West Clay Company by other defendants.
- (10) Stipulation avoiding cross-complaints between defendants. [975]
- (11) Memorandum opinion of the Court.

- (12) Decree .
- (13) Order correcting decree.
- (14) Assignment of errors.
- (15) Notice of filing assignment of errors and lodgment of statement of evidence.
- (16) Proof of service of citation, notice of filing assignment of errors and lodgment of statement of facts.
- (17) Petition for appeal and order allowing same and fixing bond.
- (18) Bond on appeal.
- (19) Citation on appeal.
- (20) Order carrying matter over term—June 30, 1922.
- (21) Order extending time for filing record—August 30, 1922.
- (22) Petition for extension of time to Oct. 9, 1922.
- (23) Order fixing Oct. 9, 1922, as time for settlement of evidence—Sept. 6, 1922.
- (24) Order extending time for settlement of statements of evidence to Oct. 9, 1922, and admission of service.
- (25) Statement of evidence.
- (26) Order extending time for filing record to Oct. 16, 1922.
- (27) Petition for extension of time to file record — Oct. 13, 1922.
- (28) Order extending time for filing record to Nov. 15, 1922.
- (29) Stipulation August 18, 1922, as to omission of captions, etc.



- (30) Praeipie for transcript of record and proof of service thereof.

CHARLES P. LUND,  
DAVIS & NEAL,

Attorneys for Washington Brick, Lime and Sewer  
Pipe Company, Appellants.

[Indorsed]: Filed in the United States District  
Court, Western District of Washington, Southern  
Division. Oct. 28, 1922. F. M. Harshberger, Clerk.  
By Ed M. Lakin, Deputy. [976]

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**Praeipie for Transcript of Record (Ben Olson  
Company).**

To the Clerk of the Above-entitled Court:

You will please prepare a transcript of the record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, under the petition for appeal and the order heretofore entered by said court allowing said appeal on behalf of Ben Olson Company, a corporation, and include in said transcript the following pleadings, proceedings, and papers on file, to wit:

1. Amended bill of complaint.
2. Answer and cross-complaint of Ben Olson Company.
3. Order allowing Ben Olson Company to amend answer and cross-complaint.
4. Amended answer and cross-complaint of Ben Olson Company with admissions of service thereof.

5. McClintic-Marshall Company's reply to amended answer of Ben Olson Company.
6. Answer and cross-complaint of J. P. Duke and Scandinavian-American Bank of Tacoma.
7. Answer of F. P. Haskell and Scandinavian-American Building Company.
8. Answer and cross-complaint of Far West Clay Company to complaint.
9. Answer of Far West Clay Company to cross-complaint of Scandinavian-American Bank and J. P. Duke.
10. Stipulation adopting above (9), as answer of all other parties.
11. Memorandum opinion of the Court.
12. Decree.
13. Order correcting decree.
14. Petition for appeal of Ben Olson Company and order allowing same and fixing bond.
15. Assignment of errors—Ben Olson Company.
16. Citation and admission of service thereof—Ben Olson Company.
17. Bond on appeal—Ben Olson Company. [977]
18. Statement of evidence.
19. Order continuing cause over term—June 30, 1922.
20. Notice of lodgment of statement of evidence, by Ben Olson Company, and service thereof.
21. Order extending time for filing record on appeal—August 30, 1922.
22. Order extending time for filing record—Sept. 6, 1922, and acknowledgment of service thereof.
23. Order fixing time for settling and approval of statement on appeal.

24. Certificate and order settling and allowing statement of testimony on appeal.
25. Petition for extension of time to file record.
26. Order extending same—Oct. 15, 1922.
27. Stipulation to omit captions, verifications and from printing records.
28. Praecept for transcript—Ben Olson Company.  
Said transcript to be prepared as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

Respectfully,

STILES & LATCHAM,

Attorneys for Ben Olson Company, Defendant and  
Cross-complainant.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 27, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [978]

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**Praecept for Transcript of Record (J. P. Duke).**

To the Clerk of the Above-entitled Court:

You will please prepare a transcript of the record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, under the petition for appeal and the order heretofore entered by said Court allowing said appeal on behalf of J. P. Duke, as Supervisor of Banks of the State of Washington, and as successor in office to the defendants Claude P. Hay, as State Bank Commissioner of the State of Washington, Forbes P. Haskell, Jr., as Special Deputy Supervisor of Banks of the State of Wash-

ington, and Scandinavian-American Bank of Tacoma, a corporation, and include in said transcript the following pleadings, proceedings, and papers on file, to wit:

1. Bill of complaint.
2. Amended complaint.
3. Answer and cross-complaint of J. P. Duke and Scandinavian-American Bank of Tacoma.
4. Acknowledgment of service of above cross-complaint and appearance and waiver.
5. Order appointing F. P. Haskell, Jr., receiver.  
[979]
6. Order granting leave to sue receiver.
7. Order permitting plaintiff to file amended complaint.
8. Motion to strike part of above cross-complaint.
9. Order granting motion to strike—June 27, 1921.
10. Reply of McClintic-Marshall Co. to the above cross-complaint.
11. Answer of E. E. Davis & Co. to the above cross-complaint.
12. Answer of Far West Clay Company to the above cross-complaint.
13. Stipulation adopting answer of Far West Clay Co.
14. Memorandum opinion of the Court.
15. Decree.
16. Order correcting decree.
17. Petition of J. P. Duke, as Supervisor of Banks of the State of Washington, and as successor in office to the defendants, Claude P. Hay, as State Bank Commissioner of the State

of Washington, Forbes P. Haskell, Jr., as Special Deputy Supervisor of Banks of the State of Washington, and Scandinavian-American Bank of Tacoma, a corporation, for appeal.

18. Order allowing above appeal and fixing bond.
19. Bond on appeal.
20. Assignments of error on above appeal.
21. Order continuing cause over term—June 30, 1922.
22. Notice of lodgment of statement of evidence, and acknowledgment of service thereof.
23. Order extending time for filing record—Aug. 30, 1922.
24. Order extending time for filing record—Sept. 6, 1922.
25. Acknowledgment of service of notice of above order of September 6, 1922.
26. Order fixing time for settling and approving statement of evidence.
27. Statement of testimony.
28. Certificate and order settling and allowing statement of testimony.
29. Petition for extending time to file record.
30. Order extending time for filing record—Oct. 13, 1922. [980]
31. Stipulation to omit captions, verifications, etc., from the printed record.
32. Citation issued on behalf of J. P. Duke, et al., herein above named and admission of service thereof.



33. Praeceptum for transcript of record and acknowledgment of service thereof.
34. Clerk's certificate to transcript of record.

Said transcript to be prepared as required by law and the rule of the United States Circuit Court of Appeals for the Ninth Circuit.

F. D. OAKLEY,

Attorneys for J. P. Duke et al., Defendants and  
Cross-complainants Above Named.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 30, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [981]

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**Praeceptum for Transcript of Record (McClintic-Marshall Company).**

To the Clerk of the Above-entitled Court:

YOU ARE HEREBY REQUESTED TO MAKE a transcript of record, to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above-entitled cause to McClintic-Marshall Company, complainant, and E. E. Davis & Company and Far West Clay Company, defendants therein, and to include in such transcript of record the following papers, now on file in your office:

1. Complainant's original complaint.
2. Order permitting filing of amended complaint.
3. Amended complaint.

4. Answer and cross-complaint of Ann Davis and R. T. Davis, Jr., and others as Tacoma Millwork Supply Company.
5. Reply of Complainant to cross-complaint of Ann Davis, et al.
6. Amended answer and supplemental complaint of Ann Davis, et al., as Tacoma Millwork Supply Company.
7. Reply of complaint to said amended answer and supplemental complaint.
8. Answer of Far West Clay Company to answer and cross-complaint [982] of Ann Davis, et al., as Tacoma Millwork Supply Company.
9. Answer of E. E. Davis & Company to answer and cross-complaint of Ann Davis et al. as Tacoma Millwork Supply Company.
10. Answer of Far West Clay Company to cross-complaint of John P. Duke as State Supervisor of Banking.
11. Stipulation adopting said answer of Far West Clay Company on behalf of other parties to the cause.
12. Order of October 14, 1921, approving and ratifying such stipulation.
13. Affidavit of Maurice A. Langhorne, sworn to February 28, 1921, and filed the same day, relative to the appointment of the Receiver.
14. Order appointing receiver for Scandinavian-American Building Company, dated March 23, 1921.

15. Order making such receiver party defendant in this cause, dated May 21, 1921.
16. Order of June 14, 1921, granting leave to sue receiver with the consent of complainant and such receiver appended thereto.
17. Order of June 27, 1921, granting complainant leave to sue receiver and to amend its amended complaint by interlineation.
18. Last four paragraphs of memorandum brief of Tacoma Millwork Supply Company in Reply to mathematical computations and other data submitted by Hayden, Langhorne & Metzger, beginning with the paragraph commencing "thus in his computations."
19. First four pages of brief of Tacoma Millwork Supply [983] Company entitled "Answer to claim made by Mr. Metzger that we have exceeded the contract prices in our demands under the reasonable values shown," to the caption "Delivery" on the 4th page thereof.
20. Court's memorandum decision.
21. Decree.
22. Order correcting decree.
23. Petition of McClintic-Marshall Company et al. for appeal and order allowing appeal.
24. Bond on appeal.
25. Assignment of errors on appeal of McClintic-Marshall Company et al.
26. Notice of lodgment of statement of evidence on behalf of McClintic-Marshall Company et al.

27. Order to show cause as to statement of evidence on behalf of McClintic-Marshall Company et al.
28. Stipulation relative to evidence on appeal of McClintic-Marshall Company et al.
29. Order settling and certifying said evidence.
30. Citation on appeal of McClintic-Marshall Company et al.
31. Acknowledgment of service of citation on appeal and order to show cause as to statement of evidence.
32. Stipulation for omission of captions and verifications on all papers included in printed transcript.
33. Praecept of McClintic-Marshall Company et al.
34. Acknowledgment of service of praecipis of several appellants.
35. Stipulation for consolidated transcript of record and for the omission therefrom of papers duplicated in the [984] several praecipis of the different appellants.
36. Stipulation for transmission of original exhibits to Circuit Court of Appeals.
37. Order directing the transmission of certain original exhibits to Circuit Court of Appeals.

38. Clerk's certificate to transcript of record.

HAYDEN, LANGHORNE & METZGER,  
Attorneys for McClintic-Marshall Co., Complainant.

JAMES W. REYNOLDS,  
PETERS & POWELL,  
Attorneys for E. E. Davis & Co.  
R. S. HOLT,  
Attorney for Far West Clay Co.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Nov. 2, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [985]

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**Stipulation as to Printing of Record.**

It is hereby stipulated and agreed by the undersigned who constitute all of the parties complainant and defendant and cross-complainants in the above-entitled action, that all captions and verifications to all complaints, cross-complaints, motions, orders and other pleadings and papers which shall be printed in the transcript of record on the appeal of the above-entitled action, to the United States Circuit Court of Appeals for the Ninth Circuit, may be omitted and not printed in said transcript of record.

HAYDEN, LANGHORNE & METZGER,  
Attorneys for Complainant.

F. D. OAKLEY,  
KELLY & MacMAHON,  
Attorneys for Scandinavian-American Building Company and for Forest P. Haskell, Its Receiver.



FITCH & ARNSTON,

R. S. HOLT,

Attorneys for Savage-Scofield Co.

JAMES W. REYNOLDS,

Attorney for E. E. Davis & Co.

R. S. HOLT,

Attorney for Far West Clay Co.

W. W. KEYES,

Attorney for Hunt & Mottet.

DAVIS & NEAL,

Attorneys for Washington Brick, Lime & Sewer  
Pipe Co.

A. O. BURMEISTER,

Attorney for United States Machine & Engineer-  
ing Co.

LYLE, HENDERSON & CARNAHAN,

Attorneys for Tacoma Shipbuilding Company.

FLICK & PAUL,

Attorneys for Tacoma Millwork Supply Co.

F. D. OAKLEY,

KELLY & MacMAHON,

Attorneys for Scandinavian-American Bank of Ta-  
coma, Claude P. Hay, Forbes P. Haskell,  
Deputy State Bank Comm., John P. Duke,  
Supervisor of Banking, et al.

BATES & PETERSON,

Attorneys for Puget Sound Iron & Steel Works.

HERBERT S. GRIGGS,

L. R. BONNEVILLE,

Attorneys for St. Paul & Tacoma Lumber Com-  
pany.

W. W. KEYES,

Attorney for Henry Mohr Hardware Company.

WALTER M. HARVEY,

Attorney for Edward Miller Cornice & Roofing  
Company.

BOGLE, MERRITT & BOGLE,

Attorney for Otis Elevator Co.

GROSSCUP & MORROW,

Attorney for Colby Star Manufacturing Company.  
[986]

STILES & LATCHAM,

Attorney for Ben Olson Co. & F. H. Godfrey.

E. N. EISENHOWER,

Attorney for Ajax Electric Company.

TEATS, TEATS & TEATS,

Attorney for J. D. Mullins Bros.

LOUIS J. MUSCIK,

Attorney for Liberty Lumber & Fuel Company.

TUCKER & HYLAND,

Attorneys for O. S. Larson.

HERR, BAYLEY & CROSON,

Attorney for Seattle Hardware Company.

CHAS. BEDFORD,

Attorney for N. A. Hansen, et al. All Included as  
Defendants in Cross-complaint.

S. F. McANALLY,

Attorney for C. H. Boedecker, Wm. L. Owen, et al.

WALTER S. FULTON,

Attorney for Crane Company.

H. A. P. MYERS,

Attorney for H. C. Greene Iron Works.

BURKEY, O'BRIEN & BURKEY,  
Attorney for City Lumber Agency.  
GROSSCUP & MORROW,  
Attorney for P. & G. Lumber Co.  
L. R. BONNEVILLE,  
Attorney for Davis & Neal.  
D. R. HOPPE,  
Attorney for Theodore Hedlund.  
BAUSMAN O. B. & E.,  
Attorneys for Frederick Webber.  
HARTMAN & HARTMAN,  
Attorney for W. E. Morris.  
DeWITT M. EVANS,  
Attorney for F. R. Schoen.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Aug. 19, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [987]

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#### **Admission of Service of Praecipis.**

The undersigned hereby acknowledge service, by receipt of copy thereof, of the several Praecipis filed with the Clerk of the above-entitled court for transcript of record by John P. Duke, as Supervisor of Banking of the State of Washington; Forbes P. Haskell, as Receiver of the Scandinavian-American Building Company; Tacoma Millwork & Supply Company; Ben Olson Company, a corporation; Washington Brick, Lime & Sewer Pipe Company, a corporation; McClintic-Marshall Company, a corporation; E. E. Davis & Company, a corporation;

and Far West Clay Company, a corporation, this  
31st day of October, 1922.

HAYDEN, LANGHORNE & METZ-  
GER,

Attorneys for McClintic-Marshall Company.

F. D. OAKLEY,

Attorneys for Scandinavian-American Bldg. Co.,  
Scandinavian-American Bank.

EDWIN H. FLICK,

Attorneys for Ann Davis, et al., as Tacoma Mill-  
work Supply Co.

GROSSCUP & MORROW,

Attorneys for Colby Star Mfg. Co.; S. J. Pritchard  
and C. H. Graves, as P. & G. Lumber Co.

L. R. BONNEVILLE,

DAVIS & NEAL,

Attorneys for Davis & Neal.

LYLE, HENDERSON & CARNAHAN,

Attorneys for Tacoma Shipbuilding Co.

FITCH & ARNTSON,

Attorneys for Savage-Scofield Co.

TEATS, TEATS & TEATS,

Attorneys for J. D. Mullins Bros.

BATES & PETERSON,

Attorneys for Puget Sound Iron & Steel Works.

JAMES W. REYNOLDS and

PETERS & POWELL,

Attorneys for E. E. Davis & Co. [988]

HERBERT S. GRIGGS,

L. R. BONNEVILLE,

Attorneys for St. Paul & Tac. Lbr. Co.

R. S. HOLT,

Attorney for Far West Clay Co.

W. W. KEYES,

Attorney for Henry Mohr Hardware Co. and Hunt  
& Mottet.

WALTER M. HARVEY,

Attorney for Edward Miller Cornice & Roofing  
Co.

H. A. P. MYERS,

Attorney for H. C. Greene Iron Works.

E. N. EISENHOWER,

Attorney for Carl Gebbers, Doing Business as Ajax  
Electric Company.

BURKEY, O'BRIEN & BURKEY,

Attorneys for City Lumber Agency.

BOGLE, MERRITT & BOGLE,

Attorneys for Otis Elevator Co.

LOUIS J. MUSCEK,

Attorney for Liberty Lumber & Fuel Co.

A. O. BURMEISTER,

Attorney for U. S. Machine & Engineering Co.

DE WITT M. EVANS,

Attorney for F. R. Schoen.

D. R. HOPPE,

Attorney for Atlas Paint Company.

S. F. McANALLY,

Attorney for C. H. Boedecker and Wm. L. Owen.

HERR, BAYLEY & CROSON,

Attorneys for Seattle Hardware Co.

D. R. HOPPE,

Attorney for Atlas Paint Company and Theodore  
Hedlund.



TUCKER & HYLAND,

Attorney for O. S. Larson.

See above,

Attorney for Theodore Hedlund.

J. M. LOCKERBY,

Attorney for West Coast Monumental Co., J. A.  
Soderquist. [989]

BAUSMAN, OLDHAM, BULLITT &  
EGGERMAN,

Attorneys for Frederick Webber, Sherman Wells  
and Geo. Simpson.

CHAS. P. LUND,

DAVIS & NEAL,

L. R. BONNEVILLE,

Attorneys for Washington Brick, Lime & Sewer  
Pipe Company.

CHAS. BEDFORD,

Attorney for N. A. Hansen; A. J. Buskirk; C. W.  
Crouse; F. L. Swain; D. A. Trolson; Fred  
Gustafson; E. Scheibal; Paul Scheibal; F. K.  
Kadza; N. Donellan; P. Hagstrom; Arthur  
Purvis; Roy Farnsworth; C. B. Dustin; L. J.  
Pettifer; Chas. Bon; L. H. Breton; W. Canaday;  
L. R. Lilly; F. McNair, Dave Shields, Ed Lind-  
berg; Joe Tikalsky; F. Mente; C. Gustafson;  
George Larson; F. Marcellino; M. Swanson;  
William Griswold; C. E. Olson; C. I. Hill; Emil  
Johnson; C. Peterson; Earl Whitford; F. A.  
Fetterly; Thomas S. Short.

HARTMAN & HARTMAN,

Attorneys for W. E. Morris.

WALTER S. FULTON,

Attorney for Crane & Co.

STILES & LATCHAM,

Attorneys for Ben Olson Co.

STILES & LATCHAM,

Attorneys for F. H. Godfrey.

NOTE: No one being in Mr. Walter M. Harvey's office, and the door being locked, I left him a copy by stuffing it thru his mail chute.

GORDON MIFFLIN.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Nov. 4, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [990]

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**Stipulation Re Consolidation of Transcript of Record.**

IT IS HEREBY STIPULATED by and between all parties hereto, through their respective attorneys of record that

WHEREAS, the above-entitled action involves varying and diverse claims which were all heard together upon the trial of said cause, and a decree was entered therein on May 2, 1922, awarding separate judgments to various parties herein, and

WHEREAS, separate appeals from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit have been allowed to

(1) Scandinavian-American Bank of Tacoma, Claude P. Hay, Forbes P. Haskell, Jr.,

Deputy State Bank Commissioner, and John P. Duke, Supervisor of Banking of the State of Washington;

(2) Scandinavian-American Building Co., and Forbes P. Haskell, Jr., its Receiver;

(3) Tacoma Millwork & Supply Company;

(4) Washington Brick, Lime & Sewer Pipe Company, a corporation;

(5) Ben Olson Company, a corporation;

(6) McClintic Marshall Company, a corporation; E. E. Davis & Company, a corporation; and Far West Clay Company, a corporation; [991]

AND WHEREAS, the evidence upon said separate appeals has all been included in one statement of the testimony and so certified by the trial court; and

WHEREAS, each of said appellants has filed with the clerk of the said District Court a praecipe directing said clerk to prepare a transcript of the record, containing so much thereof as to said appellants seem material upon the hearing of his or its appeal; and

WHEREAS, each of said praecipes has been duly served upon all parties to said action; and

WHEREAS, said praecipes call for the duplication of many parts of the record herein, which duplication is unnecessary and will needlessly encumber said record,

NOW, THEREFORE, to facilitate the preparation of the returns to said appeals and to avoid duplication in the transcript of the record, and to

expedite the hearing of said appeals, it is hereby agreed that the clerk of said District Court shall certify and transmit one consolidated transcript of the record as his return to all of said appeals; that such consolidated transcript of the record shall be filed and shall constitute transcript of the record in each of said separate appeals and may be used by each of the parties as a separate transcript of the record on their respective appeals, which appeals, notwithstanding such consolidation of the record, shall be separately docketed and heard as separate appeals; but that only two copies of the printed transcript need be furnished to counsel of each of the parties.

IT IS FURTHER STIPULATED that said appeals shall be heard, one after the other, at the February, 1923, session of said United States Circuit Court of Appeals at San Francisco, [992] California.

IT IS FURTHER STIPULATED that said consolidated transcript of the record shall consist of the papers and documents set forth in Exhibit "A" attached hereto and made a part hereof, and no others, unless on or before November 6, 1923, any party to this action shall file with the clerk of said District Court a supplemental praecipe asking for other or additional matters of record, as contemplated and provided for in Equity Rule 75, in which event any question as to the inclusion of such additional papers or documents shall be determined in the manner provided by said rule.

Dated at Tacoma, Washington, this 31st day of  
October, 1922.

HAYDEN, LANGHORNE & METZ-  
GER,

Attorneys for Complainant.

KELLY & MacMAHON,  
F. D. OAKLEY,

Attorneys for Scandinavian-American Building  
Company & Forbes P. Haskell, its Rec.

FITCH & ARNTSON,

Attorneys for Savage-Scofield Company.

JAS. W. REYNOLDS,  
PETERS & POWELL,

Attorneys for E. E. Davis & Co.

R. S. HOLT,

Attorney for Far West Clay Co.

W. W. KEYES,

Attorney for Hunt & Mottet.

CHAS. P. LUND,  
DAVIS & NEAL,

Attorneys for Washington Brick, Lime & Sewer  
Pipe Co.

A. O. BURMEISTER,

Attorney for United States Machine & Engineering  
Co.

EDWIN H. FLICK,

Attorney for Tacoma Millwork Supply Co.

KELLY & MacMAHON,  
F. D. OAKLEY,

Attorneys for Scandinavian-American Bank of  
Tacoma, Claude P. Hay, Forbes B. Haskell,  
Deputy State Bank Com., John P. Duke,  
Supervisor of Banks, et al.



BATES & PETERSON,

Attorneys for Puget Sound Iron & Steel Works.

HERBERT S. GRIGGS,

L. R. BONNEVILLE,

Attorneys for St. Paul & Tacoma Lumber Company.

W. W. KEYES,

Attorney for Henry Mohr Hdwe.

WALTER M. HARVEY,

Attorney for Edward Miller Cornice & Roofing Co.

BOGLE, MERRITT & BOGLE,

Attorney for Otis Elevator Co. [992½]

LYLE, HENDERSON & CARNAHAN,

Attorney for Tacoma Shipbuilding Company.

STILES & LATCHAM,

Attorney for Ben Olson Co. and F. H. Godfrey.

E. N. EISENHOWER,

Attorney for Ajax Electric Company.

TEATS, TEATS & TEATS,

Attorney for J. D. Mullins Bros.

LOUIS J. MUSCEK,

Attorney for Liberty Lumber & Fuel Company.

D. R. HOPPE,

Attorney for Atlas Paint Company.

TUCKER & HYLAND,

Attorney for O. S. Larson.

HARR, BAYLEY & CROSON,

Attorney for Seattle Hardware Company.

CHAS. BEDFORD,

Attorney for N. A. Hansen et al, included as defendants in cross-complaint.

S. F. McANALLY,

Attorney for Boedecker & Owens.

GROSSCUP & MORROW,

Attorney for Colby Star Manufacturing Company  
and P. & G. Lbr. Co.

H. A. P. MYERS,

Attorney for H. C. Greene Iron Works.

BURKEY, O'BRIEN & BURKEY,

Attorneys for City Lumber Agency.

WALTER S. FULTON,

Attorney for Crane Co.

---

Attorney for West Coast Monumental Co.

L. R. BONNEVILLE,

DAVIS & NEAL,

Attorney for Davis & Neal.

D. R. HOPPE,

Attorney for Theodore Hedlund.

BAUSMAN, OLDHAM, BULLITT &  
EGGERMAN,

Attorney for Frederick Webber, G. Wallace Simpson.

DeWITT M. EVANS,

Attorney for F. R. Schoen.

HARTMAN & HARTMAN,

Attorneys for W. E. Morris.

NOTICE: Copy of within stipulation left with Mr. Lockerby, atty. for J. A. Soderburg & West Coast Monumental Co., who refused to sign the same, because his client has abandoned the action.

2. No one being in Mr. Walter M. Harvey's

office, and the door being locked, I left him a copy by stuffing thru his mail chute.

(Signed) GORDON MIFFLIN. [993]

EXHIBIT "A."

LIST OF PAPERS TO BE INCLUDED IN CONSOLIDATED TRANSCRIPT.

1. Original bill of complaint.
2. Motion to dismiss complaint filed February 7, 1921.
3. Order denying motion to dismiss complaint.
4. Order permitting complainant to file Amended complaint.
5. Amended bill of complaint.
6. Petition of Tacoma Millwork Supply Company for appointment of receiver.
7. Order of March 23, 1921, appointing F. P. Haskell, Jr., receiver of Scandinavian-American Building Co.
8. Order of May 21, 1921, making F. P. Haskell, Jr., as receiver, party defendant in this cause.
9. Order of June 14, 1921, granting leave to sue receiver, with consent thereto attached.
10. Order of June 27, 1921, granting leave to sue such receiver and to amend the Amended Complaint to include F. P. Haskell, Jr., as such receiver as party defendant.
11. Answer of Scandinavian-American Building Co. and F. P. Haskell, Jr., as receiver, to Amended Complaint.
12. Complainant's motion to strike part of such answer.

13. Order of June 27, 1921, granting motion to strike.
14. Reply of complainant to said answer.
15. Answer and cross-complaint of J. P. Duke and Scandinavian-American Bank of Tacoma.
16. Acknowledgment of service of said cross-complaint and appearance and waiver.
17. Motion to strike part of said cross-complaint.
18. Order of June 27, 1921, granting said motion.
19. Reply of complainant to said answer and cross-complaint.
20. Answer and cross-complaint of Tacoma Millwork Supply Co.
21. Complainant's reply thereto.
22. Amended and Supplemental answer and complaint of Tacoma Millwork Supply Company.
23. Complainant's reply thereto.
24. Answer of F. P. Haskell, Jr., as receiver to cross-complaint of Tacoma Millwork Supply Company. [994]
27. Answer and cross-complaint of Washington Brick, Lime & Sewer Pipe Co.
28. Answer of F. P. Haskell, Jr., as Receiver, to said cross-complaint.
29. Complainant's reply to said answer and cross-complaint.
30. Order allowing Ben Olson Co. to amend answer and cross-complaint.
31. Amended answer and cross-complaint of Ben Olson Co.

32. Complainant's reply to said cross-complaint.
33. Answer of F. P. Haskell, Jr., as Receiver, to answer and cross-complaint of Ben Olson Co.
34. Answer and cross-complaint of Far West Clay Co. to amended bill of complaint.
35. Answer and cross-complaint of E. E. Davis & Co. to amended bill of complaint.
36. Answer of Far West Clay Co. to answer and cross-complaint of Scandinavian-American Bank and J. P. Duke.
37. Stipulation adopting said Answer (No. 36) as answer of all other parties.
38. Order of October 19, 1921, approving and ratifying said stipulation.
39. Stipulation avoiding cross-complaints as between defendants.
40. Stipulation between attorneys for Tacoma Millwork Supply Co. on the one hand, and attorneys for McClintic-Marshall Co., E. E. Davis & Co. and Far West Clay Co., for use on appeal, of briefs filed in this court.
41. Court's memorandum opinion.
42. Exception of Tacoma Millwork Supply Co. to said memorandum opinion.
43. Decree.
44. Order correcting decree.
45. Exceptions of Tacoma Millwork Supply Co. to decree.
46. Petition of Forbes P. Haskell, Jr., as Receiver of Scandinavian-American Building Company, a corporation, for appeal. [995]



47. Order allowing above appeal and fixing bond.
48. Bond on said appeal.
49. Assignments of error on above appeal.
50. Citation issued on behalf of Forbes P. Haskell, Jr., hereinabove named and admission of service thereof.
51. Notice of lodgment of statement of evidence, and acknowledgment of service thereof.
52. Petition for appeal on behalf of Tacoma Millwork Supply Co.
53. Order allowing said appeal.
54. Bond on said appeal.
55. Assignments of error of Tacoma Millwork Supply Co.
56. Citation on appeal of Tacoma Millwork Supply Co.
57. Proof of service of said citation.
58. Notice of lodgment of statement of evidence proposed by Tacoma Millwork Supply Co. and proof of service thereof.
59. Petition for appeal by Washington Brick, Lime & Sewer Pipe Company, and order allowing same.
60. Assignments of error by Washington Brick, Lime & Sewer Pipe Company.
61. Bond on said appeal.
62. Citation on said appeal.
63. Notice of filing assignments of error and of lodgment of statement of evidence.
64. Proof of service by Washington Brick, Lime & Sewer Pipe Co. of citation and notice of

filing assignments of error and lodgment of statement of evidence.

65. Petition for appeal of Ben Olson Company and order allowing same and fixing bond.
66. Assignment of errors—Ben Olson Company.
67. Citation and admission of service thereof—Ben Olson Co.
68. Bond on appeal—Ben Olson Company.
69. Notice of lodgment of statement of evidence.
70. Petition of J. P. Duke, as Supervisor of Banks of the State of Washington, and as Successor in office to the defendants Claude P. Hay, as State Bank Commissioner of the State of Washington, Forbes P. Haskell, [996] Jr., as Special Deputy Supervisor of Banks of the State of Washington, and Scandinavian-American Bank of Tacoma, a corporation, for appeal.
71. Order allowing above appeal and fixing bond.
72. Bond on said appeal.
73. Assignments of error on above appeal.
74. Citation issued on behalf of J. P. Duke et al. hereinabove named, and admission of service thereof.
75. Notice of lodgment of statement of evidence and acknowledgment of service thereof.
76. Petition of McClintic-Marshall Company, et al., for appeal and order allowing appeal.
77. Bond on said appeal.
78. Assignment of errors on appeal of McClintic-Marshall Company, et al.

79. Notice of lodgment of statement of evidence on behalf of McClintic-Marshall Company et al.
80. Order to show cause as to statement of evidence on behalf of McClintic-Marshall Company, et al.
81. Stipulation relative to evidence on appeal of McClintic-Marshall Company, et al.
82. Order settling and certifying said evidence.
83. Citation on appeal of McClintic-Marshall Company, et al.
84. Acknowledgment of service of citation on appeal and order to show cause as to statement of evidence.
85. First order enlarging time of Tacoma Millwork Supply Company for preparing and filing of record.
86. Second order enlarging time of Tacoma Millwork Supply Company for filing of record to July 21, 1922.
87. Order of June 30, 1922, continuing cause over the term.
88. Order of August 30, 1922, extending the time for filing the record on appeal of F. P. Haskell, Jr., as Receiver.
89. Order of August 30, 1922, extending the time for filing the record on appeal of J. P. Duke.
91. Order of September 6, 1922, extending time for filing record to October 16, 1922.

92. Order fixing time for settling statement of evidence with proof of service thereof.  
[997]
93. Statement of evidence.
94. Order of October 9, 1922, settling and certifying said statement of evidence.
95. Petition to extend time for filing record, filed October 13, 1922.
96. Order extending time for the filing of record, entered October 13, 1922.
97. Praeipe for transcript of record on behalf of F. P. Haskell, Jr., as receiver.
98. Praeipe for transcript of record on behalf of Tacoma Millwork Supply Company.
99. Praeipe for transcript of record on behalf of Washington Brick, Lime & Sewer Pipe Company.
100. Praeipe for transcript of record on behalf of Ben Olson Co.
101. Praeipe for transcript of record on behalf of J. P. Duke.
102. Praeipe for transcript of record on behalf of McClintic-Marshall Co. et al.
103. Stipulation for omission of captions and verifications, etc., from printed record.
104. Proof of service of praecipis of the several appellants.
105. Stipulation for consolidated transcript of record.
106. Order directing transmission of certain original exhibits to the Circuit Court of Appeals.

108. Clerk's certificate to transcript of record.
109. Petition for extension of time for 30 days from Nov. 15, 1922.
110. Order extending time for filing record for 30 days from Nov. 15, 1922.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov 4, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [998]

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### **Order Re Transmission of Original Exhibits.**

Upon application of counsel for the several parties, appealing from the decree of this court, entered May 2, 1922, it appearing to the Court that an inspection of the original exhibits on file in this cause is desirable, and in many instances necessary for the proper determination of said appeals, the court being otherwise duly advised in the premises,—

DOTH HEREBY ORDER that all of the original exhibits referred to by number in the list or schedule hereto appended be forwarded by the Clerk of this court to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, PROVIDED, HOWEVER, that this order and the list of exhibits hereto annexed shall not operate to prevent the application by any of the appellants for an order directing the transmittal of other original exhibits should such course hereafter be found necessary or desirable.



Done in open court this 9th day of December, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Dec. 9, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [999]

LIST OF ORIGINAL EXHIBITS TO BE  
TRANSMITTED TO THE CIRCUIT COURT  
OF APPEALS.

1. Defendants' Exhibit No. 7 attached to deposition of G. L. Taylor, being letter dated June 16, 1920, from O. S. Larson.
2. Defendants' Exhibit No. 12 attached to deposition of G. L. Taylor, being letter dated July 20, 1920, from O. S. Larson.
3. Exhibit No. 104 (Receiver) being letter Mc-M. Co. to Larson, dated June 24, 1920.
4. Exhibit No. 117 (Receiver) being letter from Webber to Mc-M. Co. dated May 1, 1920.
5. Exhibit No. 118 (Receiver), being letter from Webber to Mc-M. Co. dated May 7, 1920.
6. Exhibit No. 122 (Receiver), being letter from Webber to Mc-M. Co. dated June 12, 1920.
7. Exhibit No. 125 (Receiver), being bill of extra work by E. E. Davis & Co.
8. Exhibit No. 151 (Flick), being contract Tacoma Millwork Sup. Co.
9. Exhibit No. 152 (Flick), being contract Tacoma Millwork Sup. Co.

10. Exhibit No. 153 (Flick), being contract Tacoma Millwork Sup. Co.
11. Exhibit No. 154 (Flick), being computation of value of work done.
12. Exhibits 155 to 166 (Flick), being photographs of material.
13. Exhibit No. 167 (Flick), being letter from Tacoma Millwork Sup. Co. to Scand.-Am. Bldg. Co. dated December 27, 1920, and reply thereto dated December 30, 1920.
14. Exhibit No. 168 (Flick), being letter Tacoma Millwork Sup. Co. to F. P. Haskell, Jr., dated March 8, 1921, and reply thereto of same date.
15. Exhibit No. 169 (Receiver), being specifications and blue-prints.
16. Exhibit No. 170 (Receiver), being invoice of Millwork Co. dated July 30, 1920.
17. Exhibit No. 171 (Receiver), being invoice of Millwork Co. dated August 23, 1920.
18. Exhibit No. 172 (Flick), being lien of Millwork Co.
19. Exhibit No. 173 (Flick), being lien of Millwork Co.
20. Exhibit No. 174 (Flick), being lien of Millwork Co. [1000]
21. Exhibit No. 175 (Receiver), being letter from Millwork Co. to Frederick Webber, dated Aug. 3, 1920.
22. Exhibit No. 176 (Flick), being estimate of Millwork Co., dated January 6, 1921.

23. Complainant's Exhibit "F" attached to the deposition of G. L. Taylor.
24. Exhibit 136 (Lund), being contract of Wash. Brick, L. & S. P. Co.
25. Exhibit 191 (Flick), being letter of Far West Clay Co. to Webber, dated Feb. 23, 1920.
26. Exhibit 192 (Flick), being letter from Lund to Webber, dated Feb. 25, 1920, enclosing proposal of Wn. B., L. & S. P. Co.
27. Exhibit No. 130 (Lund), being a blue-print.
28. Exhibits No. 131-133 (Lund), being photographs of terra cotta.
29. Exhibit No. 134 (Receiver), being letter from Wells to Wash. Brick, Lime & S. P. Co., dated Nov. 2, 1920.
30. Exhibit No. 135 (Receiver), being letter from Wells to Wash. B., L. & S. P. Co., dated November 4, 1920.
32. Exhibit No. 137 (Lund), being lien notice of Wn. B., L. & S. P. Co.
33. Exhibit No. 138 (Lund), being letter Webber to Wn. B., L. & S. P. Co., dated June 5, 1920.
34. Exhibit No. 139 (Receiver), being letter Wash. B., L. & S. P. Co. to Webber, dated Feb. 19, 1920.
35. Exhibit No. 140 (Receiver), being letter from Wash. B., L. & S. P. Co. to S. A. Bldg. Co., dated Feb. 5, 1920.
36. Exhibit No. 141 (Receiver), being estimate of material.

37. Exhibit No. 142 (Receiver), being letter from Guy E. Kelly to Wash. B., L. & S. P. Co., dated August 6, 1921.
38. Exhibit No. 143 (Lund), being statement of Aug. 11, 1921.
39. Exhibit No. 144 (Lund), being checking sheets.
40. Exhibit No. 145 (Lund), being memorandum-book.
41. Exhibit No. 146 (Lund), being list of cracked terra cotta.
42. Exhibit 147 (Lund), being list of broken terra cotta.
43. Exhibit No. 148 (Lund), being legend for blue-print exh. 130.
44. Exhibit No. 149 (Lund), being letter Haskell to Fosseen, dated 3-12-1921. [1001]
45. Exhibit No. 150 (Lund), being letter Fosseen to Haskell, dated March 15, 1921.
46. Exhibit 251 (Stiles), being bid of Ben Olson Co., dated February 25, 1920.
47. Exhibit 252 (Stiles), being Ben Olson Co. contract.
48. Exhibit No. 253 (Stiles), being Ben Olson Co. Estimate No. 1.
49. Exhibit No. 254 (Stiles), being Bldg. Co.'s check 346 to Ben Olson Co.
50. Exhibit No. 255 (Stiles), being Ben Olson Co. estimate No. 2.
51. Exhibit No. 256 (Stiles), being Bldg. Co.'s check No. 530 to Ben Olson Co.

52. Exhibit No. 257 (Stiles), being Ben Olson Co. estimate No. 3.
53. Exhibit No. 258 (Stiles), being Ben Olson Co. estimate No. 4.
54. Exhibit No. 259 (Stiles), being order permitting withdrawal of certain materials.
55. Exhibit No. 260 (Stiles), being copy Ben Olson Co. lien notice.
56. Exhibit No. 261 (Stiles), being Ben Olson Co. proof of claim against S. A. Bank and reply of Haskell thereto.
57. Exhibit No. 262 (Stiles), being Ben Olson Co. estimate No. 5.
58. Exhibit No. 263 (Stiles), being Ben Olson Co. estimate No. 6.
59. Exhibit No. 264 (Receiver), being Crane Co.'s catalog.
60. Exhibit No. 265 (Receiver), being Ben Olson Co.'s petition to withdraw materials.
61. Exhibit No. 266 (Langhorne), being specifications Ben Olson Co.'s contract.
62. Exhibit 269 (Stiles), being recapitulation Ben Olson Co. claim.
63. Exhibit No. 270 (Langthorne), being order sheet Ben Olson Co.
64. Exhibit No. 183 (Flick), being minute-book S. A. Bank.
66. Defendants' Exhibit No. 8, attached to deposition to G. L. Taylor.
67. Defendants' Exhibit No. 9, attached to deposition of G. L. Taylor.



68. Defendants' Exhibit No. 10, attached to deposition of G. L. Taylor.
69. Defendants' Exhibit No. 11, attached to deposition of G. L. Taylor. [1002]
72. Exhibit No. 272 (Fulton), being lien notice of Crane Co.
73. Exhibit No. 273 (Receiver), being order of Ben Olson Co. to Crane Co., dated Feb. 27, 1920.
74. Exhibit No. 274 (Receiver), being order No. 27 Ben Olson Co. to Crane Co.
75. Exhibit No. 275 (Receiver), being order Ben Olson Co. to Crane Co., dated Feb. 26, 1920.
76. Exhibit No. 276 (Stiles), being letter Pacific San. Mfg. Co. to Crane Co.
77. Exhibit No. 357 (Stiles), being estimate of Ben Olson Co., dated April 4, 1922.
78. Exhibit No. 177 (Flick), being letter Metropolitan Life to S. A. Bldg. Co., dated November 7, 1919.
79. Exhibit No. 178 (Flick) being minute-book S. A. Bldg. Co.
80. Exhibit No. 179 (Flick), being copy Articles of Incorporation of S. A. Bldg. Co.
81. Exhibit No. 180 (Receiver), being mortgage Bldg. Co. to Simpson.
82. Exhibit No. 334 (Receiver), being said mortgage with assignment to S. A. Bank attached.
83. Exhibit No. 182 (Receiver), being declaration of trust by Simpson.

84. Exhibit No. 184 (Receiver), being certificate and agreement of S. A. Bank.
85. Exhibit No. 185 (Flick), being collateral card of S. A. Bank.
86. Exhibit No. 187 (Flick), being ledger card of S. A. Bank.
87. Exhibit No. 188 (Flick), being six ledger cards of S. A. Bank.
88. Exhibit No. 190 (Flick), being debit memo of S. A. Bank and deposit slip attached.
89. Exhibit No. 193 (Flick), being letter of Metropolitan Life Insurance Co. to O. S. Larson, dated Sept. 19, 1919.
90. Exhibit No. 194 (Flick), being telegram from Stabler to S. A. Bank.
91. Exhibit No. 195 (Stiles), being five stock certificates of S. A. Bldg. Co.
92. Exhibit No. 199 (Receiver), being letter of Larson to Simpson, dated August 29, 1919, and telegram Simpson to Larson, dated August 24, 1919. [1003]
93. Exhibit No. 202 (Receiver), being letter Chilberg to Larson, dated Aug. 6, 1919.
94. Exhibit No. 203 (Receiver), being letter Larson to Chilberg, dated August 16, 1919.
95. Exhibit No. 204 (Receiver), being letter Larson to Chilberg, dated August 20, 1919, and reply, dated Aug. 19, 1919.
96. Exhibit No. 205 (Receiver), being telegram Stabler to Larson, dated October 15, 1919.
97. Exhibit No. 206 (Receiver), being letter Baus-

man, Oldham to Bldg. Co., dated Nov. 12, 1919.

98. Exhibit No. 207 (Receiver), being letter Larson to Oldham, dated November 13, 1919.
99. Exhibit No. 208 (Receiver), being telegram Simpson to Larson, dated October 25, 1919.
100. Exhibit No. 209 (Receiver), being letter and telegram Larson to Stabler, dated October 18th and October 16th, 1919, et al.
101. Exhibit No. 210 (Receiver), being letter Waid to Larson, dated July 2, 1920, and reply dated July 7, 1920.
102. Exhibit No. 211 (Receiver), being letter Waid to Larson, dated July 28, 1920.
103. Exhibit No. 212 (Receiver), being letters between Waid and Larson, dated November 3d and November 10th, 1920.
104. Exhibit No. 213 (Receiver), being telegram Larson to Simpson, dated June 22, 1920, and telegram Simpson to Larson, dated June 17, 1920.
105. Exhibit No. 214 (Receiver), being telegram Larson to Simpson, dated December 31, 1920.
106. Exhibits Nos. 215 to 218 (Receiver), being telegrams Larson to Simpson, from Dec 16, 1920.
107. Exhibit No. 219 (Receiver), being letter Hay to Larson, dated June 21, 1920.
108. Exhibit No. 220 (Receiver), being letter Hay to Larson, dated Aug. 23, 1920.

109. Exhibit No. 221 (Receiver), being letter Hay to Larson, dated November 12, 1920.
110. Exhibit No. 222 (Receiver), being telegram Simpson to Williamson, dated December 30, 1919.
111. Exhibit No. 223 (Receiver), being note of Bldg. Co. for \$600,000.
112. Exhibit No. 224 (Receiver), being telegram and confirmation Larson to Oldham, dated March 11th and April 15th, 1920. [1004]
113. Exhibit No. 225 (Receiver), being notice from Bank Commissioner, dated Jan. 5, 1920.
114. Exhibit No. 226 (Receiver), being statement of S. A. Bank, dated May 4, 1920.
115. Exhibit No. 227 (Receiver), being statement S. A. Bank, dated Feb. 28, 1920.
116. Exhibit No. 228 (Flick), being telegram Larson to Simpson, dated June 1, 1920.
117. Exhibit No. 229 (Flick), being telegram Larson to Simpson, dated November 20, 1920.
118. Exhibit No. 230 (Receiver), being power of attorney to Simpson, dated Aug. 17, 1920.
119. Exhibit No. 234 (Flick), being ledger sheet for bank account No. 13.
120. Exhibit No. 235 (Flick), being memorandum voucher, dated December 31, 1920.
121. Exhibit No. 242 (Receiver), being mortgages S. A. Bank to Penn Mutual for \$100,000.
122. Exhibit No. 243 (Receiver), being note of S. A. Bank to Penn Mutual for \$100,000.
123. Exhibit No. 244 (Receiver), being affidavit of good faith by Chilberg and wife.

124. Exhibit No. 245 (Receiver), being agreement for extension of \$100,000 mortgage.
125. Exhibit No. 248 (Receiver), memos Larson to Sheldon, dated June 28 and Sept. 24, 1920.
126. Exhibit No. 249 (Receiver), being note of Bldg. Co. to S. A. Bank and memo thereto attached, dated October 7, 1920.
127. Exhibit No. 250 (Flick), being certificate of stock of Bldg. Co.
128. Exhibit No. 322 (Receiver), being deed S. A. Bank to Chilberg.
129. Exhibit No. 323 (Receiver), being deed from Chilberg and wife to S. A. Bank.
130. Exhibit No. 324 (Receiver), being affidavit of good faith by Chilberg and wife.
131. Exhibit No. 325 (Receiver), being deed from S. A. Bank to S. A. Bldg. Co.
132. Exhibit No. 326 (Receiver), being mortgage from Chilberg and wife to Penn Mutual.  
[1005]
133. Exhibit No. 327 (Receiver), being agreement for extension of Penn Mutual note and mortgage.
134. Exhibit No. 328 (Receiver), being assignment mortgage from Penn Mutual to Haskell.
135. Exhibit No. 329 (Receiver), being assignment mortgage from Haskell to Duke.
136. Exhibit No. 330 (Receiver), being appointment Haskell as Deputy Bank Commissioner.



137. Exhibit No. 331 (Receiver), being appointment Haskell as Special Deputy Supervisor of Banking.
138. Exhibit No. 332 (Receiver), being deed from Drury and wife to S. A. Bldg. Co.
139. Exhibit No. 335 (Receiver), being order of Superior Court to take up Penn Mutual mortgage.
140. Exhibit No. 336 (Receiver), being filing jacket of S. A. Bank.
141. Exhibit No. 338 (Receiver), being check No. 157 of Haskell as Special Deputy Bank Commissioner.
142. Exhibit No. 340 (Receiver), being telegram from Lindeberg to Larson, dated November 11, 1919.
143. Exhibit No. 341 (Receiver), being check to Penn Mutual for \$70,000 and letter from Larson to Sheldon relating to same.
144. Exhibit No. 342 (Receiver), being memorandum from Larson to Sheldon, dated Sept. 23, 1920.
145. Exhibit No. 343 (Receiver), being telegram from Larson to Sheldon, dated Sept. 30, 1920.
146. Exhibit No. 344 (Receiver), being telegram from Jack to Sheldon, dated October 1, 1920.
147. Exhibit No. 345 (Receiver), being telegram Larson to Sheldon, dated October 1, 1920.
148. Exhibit No. 346 (Receiver), being telegram Jack to Sheldon, dated October 7, 1920.

149. Exhibit No. 347 (Receiver), being telegram Larson to Sheldon, dated October 5, 1920.
  150. Exhibit No. 348 (Receiver), being statement of indebtedness S. A. Bldg. Co. to S. A. Bank.
  151. Exhibit No. 349 (Receiver), being published statement of condition of S. A. Bank as of November 15, 1920. [1006]
  152. Exhibit No. 350 (Receiver), being statement of interest charges to S. A. Bldg. Co.
  153. Exhibit No. 351 (Flick), being original ledger sheet of S. A. Bank for S. A. Bldg. Co. account.
  154. Exhibit No. 352 (Flick), being original ledger sheet of S. A. Bank covering banking-house account.
  155. Exhibit No. 353 (Flick), being ledger sheet of S. A. Bank covering general real estate account.
  156. *Exhi* [1007]
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**Certificate of Clerk U. S. District Court to Transcript of Record.**

United States of America,  
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing pages numbered from one to 1014, inclusive, constitute a full, true and correct transcript of the record and proceedings in the con-

solidated appeal in the matter of the appeals in the case of McClintic-Marshall Company, a corporation, complainant against Scandinavian-American Building Co., a corporation, Scandinavian-American American Bank, a corporation, and Ann Davis and R. T. Davis, as executors of the estate of R. T. Davis, deceased, et al., as Tacoma Millwork Supply Company et al., defendants, lately pending in this court, as set forth by the praecipies of counsel for each appellant in the several appeals herein consolidated and filed in said cause, as the originals appear on file in this court at the City of Tacoma, Washington, in the District aforesaid.

I further certify and return that I hereto attach and herewith transmit the original citation of each appellant herein.

I further certify that I have on October 14th, 1922, and on November 10th, 1922, forwarded to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, the original orders extending time for transcript, copies of which orders are included in the transcript.

I further certify that I am transmitting all of the exhibits referred to attached to the order requiring them to be transmitted to the Circuit Court of Appeals for the Ninth [1008] Circuit.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred on behalf of the several appellants herein as hereinafter set forth, for making the record, certificate and return to the United States

Circuit Court of Appeals for the Ninth Circuit in said above-entitled cause, as follows, to wit:

Clerk's Fees (Sec. 828, R. S. U. S.) for making record, certificate and return of Forbes P. Haskell, as Receiver of Scandinavian-American Building Co., etc., Appellant No. 1, 391 fols. @ 15¢ ea. \$	58.65
Clerk's Fees (Sec. 828, R. S. U. S.) for making record certificate and return of Tacoma Millwork Supply Co., Appellant No. 2, 618 fols. @ 15¢ ea. ....	92.70
Clerk's Fees (Sec. 828, R. S. U. S.) for making record, certificate and return of McClintic-Marshall Co. et al., Appellants No. 3, 117 fols. @ 15¢ ea. ....	17.55
Clerk's Fees (Sec. 828, R. S. U. S.) for making record, certificate and return of Washington Brick, Lime & Sewer Pipe Company, Appellant No. 4, 357 fols. @ 15¢ .....	53.55
Clerk's Fees (Sec. 828, R. S. U. S.) for making record, certificate and return of Ben Olson Co. Appellant No. 5, 432 fols. @ 15¢ ea. ....	64.80
Clerk's Fees, (Sec. 828, R. S. U. S.) for making record, certificate and return of John P. Duke as Supervisor of Banks of the State of Washington, etc., et al., Appellant No. 6, 1029 fols. @ 15¢ ea. ..	154.35
Certificate to Transcript, 6 folios @ 15¢ ea.	.90
Seal of said certificate .....	.20

ATTEST my official signature and the seal of the said Court at Tacoma, in said District, this 11th day of December, A. D. 1922.

[Seal]

F. M. HARSHBERGER,

Clerk.

By Alice Huggins,  
Deputy Clerk. [1009]

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**Petition of James P. Duke, Supervisor of Banking of the State of Washington, Forbes P. Haskell, as Receiver of the Scandinavian-American Building Company, Tacoma Millwork Company, Ben Olson Company, Washington Brick, Lime & Sewer Pipe Company, McClintic-Marshall Company, E. E. Davis & Company and Far West Clay Company for Order Extending Time to File Record on Appeal.**

The petition of James P. Duke, Supervisor of Banking of the State of Washington, Forbes P. Haskell, as Receiver of the Scandinavian-American Building Company, Tacoma Millwork Company, Ben Olson Company, Washington Brick, Lime & Sewer Pipe Company, McClintic-Marshall Company, E. E. Davis & Company, and Far West Clay Company respectfully shows that on the 3d day of May, 1922, a decree, denying to the petitioners herein the relief prayed for in their respective answers and cross-complaints, was entered by this court in the above-entitled action, and your petitioners further show that appeals to the Circuit Court of Ap-



peals of the United States for the Ninth Circuit have been heretofore allowed by your Honor, and that citations have been issued by your Honor for all of the undersigned petitioners. And that subsequently your Honor extended said return days upon all of said citations to the 15th day of November, 1922.

That your Honor, pursuant to orders extending time [1010] theretofore entered, settled and approved the statement of evidence on the 9th day of October, 1922.

Your petitioners further show that because of the great number of pleadings and exhibits which are in the record of the trial of the cause before your Honor, and because of the largeness of said record, your petitioners will not be able to file the same in the Circuit Court of Appeals as aforesaid by the 15th day of November, 1922.

The premises considered, your petitioners pray that they be granted an enlargement of time in which to file the record in said Circuit Court of Appeals for the Ninth Circuit, and that they be allowed thirty days from the 15th day of November, 1922, in addition to the time allowed by law, and as in duty bound your petitioners will ever pray, etc.

F. D. OAKLEY,  
KELLY & MacMAHON,

Solicitors for James P. Duke, Supervisor of Banking of the State of Washington.

F. D. OAKLEY,  
KELLY & MacMAHON,

Solicitors for Forbes P. Haskell, as Receiver of the Scandinavian-American Building Company.

ERWIN H. FLICK,  
Solicitor for Tacoma Millwork Company.

STILES & LATCHAM,  
Solicitor for Ben Olson Company.

CHARLES P. LUND,  
DAVIS & NEAL,  
Solicitors for the Washington Brick, Lime & Sewer  
Pipe Company.

HAYDEN, LANGHORNE & METZGER,  
Solicitors for McClintic-Marshall Company.

[1011]

JAS. W. REYNOLDS,  
PETERS & POWELL,  
Solicitors for E. E. Davis & Company.

H. S. HOLT,  
Solicitor for Far West Clay Company.

[Indorsed]: Filed in the United States District  
Court, Western District of Washington, Southern  
Division. November 15, 1922. F. M. Harshberger,  
Clerk. By Ed M. Lakin, Deputy. [1012]

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### **Order Allowing Petition for Extending Time.**

This cause came on to be heard on the petition of James P. Duke, Supervisor of Banking of the State of Washington, Forbes P. Haskell, as Receiver of the Scandinavian-American Building Company, Tacoma Millwork Company, Ben Olson Company and the Washington Brick, Lime & Sewer Pipe Company, McClintic-Marshall Company, E. E. Davis & Company and Far West Clay Company, defendants

and cross-complainants and appellants in the above-entitled cause, praying for an enlargement of time in which to file the record in this cause in the Circuit Court of Appeals of the United States for the Ninth Circuit.

And it appearing to the court that, by reason of the great volume of pleadings and exhibits and of the record, the said appellants will not have time to file the same in the Circuit Court of Appeals of the United States for the Ninth Circuit by the 15th day of November, 1922, which is the time required by law, as extended by order of this Court,—

IT IS THEREFORE HEREBY ORDERED, ADJUDGED and DECREED that the said appellants be and they are hereby allowed, in addition to the time allowed by law, as heretofore extended by this Court, thirty days from the 15th day of November, 1922, [1013] in which to file the record in this cause in the Circuit Court of Appeals of the United States for the Ninth Circuit.

Done in open court this 10th day of November, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Nov. 10, 1922. By F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [1014]

[Endorsed]: No. 3953. United States Circuit Court of Appeals for the Ninth Circuit. Forbes P. Haskell, as Receiver of Scandinavian-American Building Company, a Corporation, et al., Appellants, vs. McClintic-Marshall Company, a Corporation, et al., Appellees. Tacoma Millwork Supply Company, a Partnership Consisting of Ann Davis and R. T. Davis, Jr., as Executors of the Estate of R. T. Davis, Deceased, R. T. Davis, Jr., Lloyd Davis, Harry L. Davis, George L. Davis, Maude A. Davis, Marie A. Davis, Ruth G. Davis, Hattie Davis Tennant and Ann Davis, Appellants, vs. McClintic-Marshall Company, a Corporation, et al., Appellees. McClintic-Marshall Company, a Corporation, and E. E. Davis & Company, a Corporation, and Far West Clay Company, a Corporation, Appellants vs. Ann Davis and R. T. Davis, Jr., as Executors of the Estate of R. T. Davis, Deceased, et al., Appellees. Washington Brick, Lime & Sewer Company, a Corporation, Appellant, vs. McClintic-Marshall Company, a Corporation, et al., Appellees. Ben Olson Company, a Corporation, Appellant, vs. McClintic-Marshall Company, a Corporation et al., Appellees. J. P. Duke, as Supervisor of Banks of the State of Washington, and as Successor in Office of the Defendant Claude P. Hay, as State Bank Commissioner of the State of Washington, Forbes P. Haskell, Jr., as Special Deputy Supervisor of Banks of the State of Washington, and Scandinavian-American Bank of Tacoma, a Corporation, Appellants, vs. McClintic-Marshall Company, a Corporation, et al., Appellees. Transcript of Record.

Upon Appeals from the United States District Court for the Western District of Washington, Southern Division.

Filed December 14, 1922.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

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In the District Court of the United States for the Western District of Washington, Southern Division.

No. 117—E.

McCLINTIC-MARSHALL COMPANY, a Corporation,

Complainant,

vs.

SCANDINAVIAN-AMERICAN BUILDING COMPANY, a Corporation, et al.,

Defendants.

**Order Extending Time to and Including July 10, 1922, to File Record and Docket Cause (Washington Brick, Lime & Sewer Pipe Company).**

This matter coming on for hearing, upon the application of the Washington Brick, Lime & Sewer Pipe Company, for additional time within which to prepare and file their record on appeal in this cause,—



IT IS HEREBY ORDERED that the Washington Brick, Lime & Sewer Pipe Company may have until the 10th day of July, 1922, within which to prepare and file in this court their record on appeal herein.

Done at Tacoma, Washington, this 29th day of June, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 29, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy.

No. 3953. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including July 10, 1922, to File Record and Docket Cause. Filed Oct. 16, 1922. F. D. Monekton, Clerk. Re-filed Dec. 14, 1922. F. D. Monekton, Clerk.

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In the District Court of the United States for the Western District of Washington, Southern Division.

No. 117—E.

McCLINTIC-MARSHALL COMPANY, a Corporation,

Claimant,

vs.

SCANDINAVIAN-AMERICAN BUILDING  
COMPANY, a Corporation, et al.,  
Defendants.

**Order Extending Time to and Including September 28, 1922, to File Record and Docket Cause (Forbes P. Haskell, Jr.).**

For satisfactory reasons appearing to the Court, the time for filing record on behalf of Forbes P. Haskell, as Receiver of Scandinavian Building Company, a corporation, in this cause in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to the appeal sued out, is hereby extended to and including the 28th day of September, 1922.

Dated August 30th, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Endorsed]: No. 117—E. In the United States Court, Western District of Washington. *McClintic-Marshall Company, a Corporation, Complainant, vs. Scandinavian-American Building Company, a Corporation, et al., Defendants.* Filed in the United States District Court, Western District of Washington, Southern Division. Aug. 31, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy.

No. 3953. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and including Sept. 28, 1922, to File Record and Docket Cause. Filed Oct. 16, 1922. F. D. Monckton, Clerk. Refiled Dec. 14, 1922. F. D. Monckton, Clerk.

In the District Court of the United States for the  
Western District of Washington, Southern  
Division.

No. 117—E.

McCLINTIC-MARSHALL COMPANY, *la* Cor-  
poration,

Complainant,

vs.

SCANDINAVIAN-AMERICAN BUILDING  
COMPANY, a Corporation, et al.,

Defendants.

**Order Extending Time to and Including September  
28, 1922, to File Record and Docket Cause  
(J. P. Duke).**

For satisfactory reasons appearing to the Court,  
the time for filing record on behalf of J. P. Duke,  
as Supervisor of Banks of the State of Washing-  
ton, and as Successor in office to the defendants  
Claude P. Hay, as State Bank Commissioner of  
the State of Washington, Forbes P. Haskell, Jr.,  
as Special Deputy Supervisor of Banks of the State  
of Washington, and Scandinavian-American Bank  
of Tacoma, a Corporation, in this cause in the United  
States Circuit Court of Appeals for the Ninth Cir-  
cuit, pursuant to the appeal sued out, is hereby ex-  
tended to and including the 28th day of September,  
1922.

Dated August 30th, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Endorsed]: No. 117—E. In the United States Court, Western District of Washington. McClintic-Marshall Company, a Corporation, Complainant, vs. Scandinavian-American Building Company, a Corporation, et al., Defendants. Filed in the United States District Court, Western District of Washington, Southern Division. Aug. 31, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy.

No. 3953. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including September 28, 1922, to File Record and Docket Cause. Filed Oct. 16, 1922. F. D. Monckton, Clerk. Refiled Dec. 14, 1922. F. D. Monckton, Clerk.

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In the District Court of the United States for the  
Western District of Washington, Southern  
Division.

No. 117—E.

McCLINTIC-MARSHALL COMPANY, a Cor-  
poration,

Complainant,

vs.

SCANDINAVIAN-AMERICAN BUILDING  
COMPANY, a Corporation, et al.,  
Defendants.

**Order Extending Time to and Including October 16, 1922 to File Record and Docket Cause (Ben Olsen Company et al.).**

This matter coming on for hearing on this 6th day of September, 1922, on the application of Ben Olsen Company, a corporation, the Tacoma Millwork & Supply Company, a corporation, the Washington Brick, Lime & Sewer Pipe Company, a corporation, Forbes P. Haskell, as Receiver of Scandinavian-American Building Company, and J. P. Duke, as Supervisor of Banks of the State of Washington, and as successor in office to the defendants Claude P. Hay, as State Bank Commissioner of the State of Washington, Forbes P. Haskell, Jr., as Special Deputy Supervisor of Banks of the State of Washington, and Scandinavian-American Bank of Tacoma, a corporation, appellants herein, for an order extending the time for the preparation and filing of the transcripts and records on appeal, pursuant to the appeals sued out herein by the various appellants, to Monday, October 16, 1922, for the reason that the Court has been unable to sooner settle the various statements of evidence, and is about to be absent from the state, and for other satisfactory reasons, now therefore,—

IT IS HEREBY ORDERED, that the time for for the preparation and filing of the transcripts and records on appeal on behalf of the various appellants named herein, in the Circuit Court of Appeals of the Ninth Circuit of the United States, be en-



larged and extended to and including the 16th day of October, 1922.

Done in open court this 6th day of September, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Sep. 6, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy.

No. 3953. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including October 18, 1922, to File Record and Docket Cause. Filed Oct. 16, 1922. F. D. Monekton, Clerk. Refiled Dec. 14, 1922. F. D. Monekton, Clerk.

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In the District Court of the United States, for the  
Western District of Washington, Southern  
Division.

No. 117—E.

McCLINTIC-MARSHALL COMPANY, a Cor-  
poration,

Complainant,

vs.

SCANDINAVIAN-AMERICAN BUILDING  
COMPANY, a Corporation, et al.,  
Defendants.

**Order Extending Time to and Including November 16, 1922, to File Record and Docket Cause (James P. Duke et al.).**

This cause came on to be heard on the petition of James P. Duke, Supervisor of Banking of the State of Washington, Forbes P. Haskell, as Receiver of the Scandinavian-American Building Company, Tacoma Millwork Company, Ben Olson Company and the Washington Brick, Lime & Sewer Pipe Company, defendants and cross-complainants and appellants in the above-entitled cause, praying for an enlargement of time in which to file the record in this cause in the Circuit Court of Appeals of the United States for the Ninth Circuit.

And it appearing to the Court that, by reason of the great volume of pleadings and exhibits and of the record, the said appellants will not have time to file the same in the Circuit Court of Appeals of the United States for the Ninth Circuit by the 16th day of October, 1922, which is the time required by law, as extended by order of this Court,—

IT IS THEREFORE HEREBY ORDERED, ADJUDGED and DECREED that the said appellants be and they are hereby allowed, in addition to the time allowed by law, as heretofore extended by this Court, thirty days from the 16th day of October, 1922, in which to file the record in this cause in the Circuit Court of Appeals of the United States for the Ninth Circuit.

Done in open court this 13th day of October, 1922.

EDWARD E. CUSHMAN,

Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Oct. 13, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy.

No. 3953. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including November 16, 1922, to File Record and Docket Cause. Filed Oct. 16, 1922. F. D. Monckton, Clerk. Refiled Dec. 14, 1922. F. D. Monckton, Clerk.

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In the District Court of the United States for the  
Western District of Washington, Southern  
Division.

No. 117—E.

McCLINTIC-MARSHALL COMPANY, a Cor-  
poration,

Complainant,

vs.

SCANDINAVIAN-AMERICAN BUILDING  
COMPANY, a Corporation, et al.,

Defendants.

**Order Extending Time to and Including December  
15, 1922, to File Record and Docket Cause  
(James P. Duke et al.).**

This cause came on to be heard on the petition of James P. Duke, Supervisor of Banking of the State of Washington, Forbes P. Haskell, as Receiver of

the Scandinavian-American Building Company, Tacoma Millwork Company, Ben Olson Company and the Washington Brick, Lime & Sewer Pipe Company, McClintic-Marshall Company, E. E. Davis & Company and Far West Clay Company, defendants and cross-complainants and appellants in the above-entitled cause, praying for an enlargement of time in which to file the record in this cause in the Circuit Court of Appeals of the United States for the Ninth Circuit.

And it appearing to the Court that, by reason of the great volume of pleadings and exhibits and of the record, the said appellants will not have time to file the same in the Circuit Court of Appeals of the United States for the Ninth Circuit by the 15th day of November, 1922, which is the time required by law, as extended by order of this Court,—

IT IS THEREFORE HEREBY ORDERED, ADJUDGED and DECREED that the said appellants be and they are hereby allowed, in addition to the time allowed by law, as heretofore extended by this Court, thirty days from the 15th day of November, 1922, in which to file the record in this cause in the Circuit Court of Appeals of the United States for the Ninth Circuit.

Done in open court this 10th day of November, 1922.

EDWARD E. CUSHMAN,  
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Nov. 10, 1922. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy.

No. 3953. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including December 15, 1922, to File Record and Docket cause. Filed Nov. 13, 1922. F. D. Monckton, Clerk. Refiled Dec. 14, 1922. F. D. Monckton, Clerk.



